SUPREME COURT, U.S.
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No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

DR. CARMEL McENROY,
Petitioner,

v.

ST. MEINRAD SCHOOL OF THEOLOGY,
RT. REVEREND TIMOTHY SWEENEY,
and REVEREND EUGENE HENSELL,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF INDIANA

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether in a contract dispute between a tenured faculty member of a religious school of higher education and the school itself, a civil court is prohibited from applying neutral principles of law solely because the school is a religious institution.

PARTIES TO THE PROCEEDING

Petitioner

Dr. Carmel McEnroy is an individual and has no corporate affiliations.

Respondents

St. Meinrad School of Theology, Rt. Reverend Timothy Sweeney, and Reverend Eugene Hensell.

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OPINIONS BELOW

The opinion of the Court of Appeals of Indiana is reported at 713 N.E.2d 334 (Ind. Ct. App. 1999). A copy of the Opinion is included in the Appendix at Appendix A at 1a-10a. The Indiana Supreme Court's denial of Dr. McEnroy's petition to transfer is unreported but is included in the Appendix at Appendix B at 11a-12a. The opinion of the Spencer Circuit Court of the State of Indiana is unreported but is included in the Appendix at Appendix C at 13a-23a.

JURISDICTION

The petition to transfer to the Indiana Supreme Court was denied on November 19, 1999. (App. B. at 11a-12a).[1] This Petition for Writ of Certiorari is filed within 90 days of the denial of the petition to transfer. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §1257.

CONSTITUTIONAL PROVISION INVOLVED

U.S. Const. Amend. 1.
Freedom of Religion

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .

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[1] Citations to "App." are to the appendix filed with this Petition for Writ of Certiorari pursuant to Supreme Court Rule 14.

STATEMENT OF THE CASE

The facts of this case are undisputed. Petitioner, Sister Carmel McEnroy, R.S.M., Ph.D. (hereinafter "Dr. McEnroy"), is a Roman Catholic nun who taught theology courses at Respondent St. Meinrad School of Theology ("the School") for fourteen years before her termination in 1995. Respondents Rt. Reverend Timothy Sweeney (hereinafter "Reverend Sweeney") and Reverend Eugene Hensell (hereinafter "Reverend Hensell"), were the remaining parties before the Spencer Circuit Court in the State of Indiana. Reverend Sweeney was at all times relevant to this action the Archabbot of the Saint Meinrad Monastic Community. (Record ["R"] at 6). Reverend Hensell was at all relevant times President-Rector of the School. (R. at 5-6). Dr. McEnroy asserted claims against the School and Reverend Hensell for breach of contract and breach of implied covenant of good faith and fair dealing, and against Reverend Sweeney for tortious interference with contractual relations.

Dr. McEnroy began teaching at the School in 1981. In May of 1992, after eleven years at the School, Dr. McEnroy was granted continuing appointment, or tenured status, as a faculty member of the School. (R. at 16, 283). She held this status until her termination in May of 1995.

Dr. McEnroy's contract (*See* App. D at 24a-25a) expressly incorporated the terms of the Faculty Constitution (*See* App. E at 26a-71a) as the terms of appointment and dismissal. Specifically, Section 3.309 of the Faculty Constitution provided the circumstances under which a tenured faculty member could be dismissed:

> Continuing Appointment implies that the faculty member with Continuing Appointment

> may be dismissed only for *grave cause as spelled out in Sections 3.202, 3.203, 3.204 of the Constitution, or on account of a grave financial emergency, or because that teaching post no longer serves the needs of the Institution and will be discontinued by a vote of the faculty* (emphasis added).

App. E at 45a. (R. at 296). Section 3.202 of the Faculty Constitution requires that the Personnel Committee advise the President-Rector as to whether or not "grave cause" exists according to the 1940 American Association of University Professors ("AAUP") Statement of Principles Section 3.203 provides for the termination of employment of a married priest. Section 3.204 provides that ex-communication is grounds for automatic dismissal. App. E at 43a-44a. (R. at 296).

On November 4, 1994, the National Catholic Reporter printed an "Open Letter" to the Pope and the U.S. Conference of Catholic Bishops. (R. at 332). Dr. McEnroy, along with over 1,500 other people, signed this Open Letter requesting the Pope and the Bishops to allow dialogue to remain open on the ordination of women. Dr. McEnroy signed the letter in her capacity as a private person (*viz.* "Carmel Elizabeth McEnroy"), mentioning neither her affiliation with the School nor her affiliation with her religious community.[2] (R. at 331-34). Dr. McEnroy was thereafter

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[2] Dr. McEnroy signed a prior open letter published in the National Catholic Reporter on November 18, 1988. (R. 335-38). Dr. McEnroy was not reprimanded in any way for signing this 1988 open letter, which called to eliminate sexism from the church. Reverend Hensell explained that he could not reprimand the faculty

dismissed but Section 3.309 of the Faculty Constitution was not relied upon by the School.

Dr. McEnroy filed her complaint in Spencer Circuit Court on May 13, 1997.[3] (R. at 5). The Respondents immediately filed a motion to dismiss pursuant to Indiana Trial Rule 12(b)(1). The Spencer Circuit Court's order of dismissal (entered February 23, 1998) was based on lack of subject matter jurisdiction. App. C at 23a. (R. at 442).

Dr. McEnroy timely appealed the trial court's order to the Indiana Court of Appeals. The Court of Appeals affirmed the trial court's ruling. McEnroy v. St. Meinrad School of Theology, 713 N.E.2d 334, 336 (Ind. Ct. App. 1999). Dr. McEnroy timely filed a Petition to Transfer with the Supreme

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signatories because of their position as faculty members with academic freedom. (R. at 335-57).

[3] Prior to raising her claims in state court, Dr. McEnroy filed a sexual discrimination claim against the School and Reverend Sweeney with the Equal Employment Opportunity Commission. The EEOC dismissed her claim for lack of subject matter jurisdiction. Dr. McEnroy then filed a Title VII claim and state law claims against the School and Reverend Sweeney in the United States District Court Southern District of Indiana, Evansville Division. Her Title VII claim was dismissed for lack of subject matter jurisdiction, and the state law claims were dismissed without prejudice for lack of independent grounds for federal jurisdiction. These claims were dismissed because of a specific provision of Title VII, commonly referred to as the ministerial exception. Those actions and the opinions in those cases were not based on Dr. McEnroy's state law tort and contract claims. Accordingly, those opinions are not relevant to this Petition and are not included in the Appendix.

Court of Indiana. This Petition was denied without opinion by the Supreme Court of Indiana on November 19, 1999. App. B at 11a-12a.

Dr. McEnroy did not state a constitutional issue in her complaint, but rather based her claim on state tort and contract law. The federal question Dr. McEnroy now seeks to be reviewed was first raised by the School in its motion to dismiss pursuant to Indiana Trial Rule 12(B)(1) (filed August 8, 1997) (R. at 36-39). The specific federal question raised by the School was the application of the First Amendment to the United States Constitution to the dismissal of tenured faculty at religious schools:

> This Court lacks jurisdiction over Dr. McEnroy's breach of contract claims because:
> (a) the First Amendment prohibits civil courts from determining whether a church member violated church law or doctrine; to decide whether Saint Meinrad breached Dr. McEnroy's contract, the Court would have to determine whether Dr. McEnroy dissented from the Pope's teaching and whether the canon law required her removal; and
> (b) the First Amendment exclusively commits to churches, and not courts, the power to discipline their ministerial employees, and Saint Meinrad retained Father Timothy's constitutional right to exercise his authority to discipline Dr. McEnroy for her violation of canon law.

(R. at 37-38).

The Spencer Circuit Court ruled as follows on this constitutional issue:

> Deciding whether Dr. McEnroy or the defendants are correct about those issues of church doctrine would excessively entangle the Court in religion in violation of the Establishment Clause. . . .
>
> The United States Supreme Court has held that the First Amendment protects a church's right to select and discipline its ministerial employees. (citations omitted) . . . [The United States Supreme Court] held that churches have the power to decide for themselves "matters of church government as well as those of faith and doctrine" and concluded that the Free Exercise Clause protects a church's freedom to select its own clergy. (citations omitted). . . . [T]he First Amendment prohibits discovery and trial probing whether Dr. McEnroy's actions constituted "dissent" from the Pope's teaching and required her removal under Church canon law.

App. C at 18a-22a. (R. at 437-440).

The Indiana Court of Appeals ruled on this constitutional issue as follows:

> In light of the Statement on Governance, resolution of Dr. McEnroy's claims would require the trial court to interpret and apply religious doctrine and ecclesiastical law. At a

> minimum, the trial court would have to determine whether: (1) Archabbot Sweeney properly exercised his jurisdiction over Saint Meinrad, (2) Dr. McEnroy's conduct constituted public dissent or caused her to be "seriously deficient," and (3) canon law required Archabbot Sweeney to remove Dr. McEnroy from her teaching position. Because the trial court would be clearly and excessively entangled in religious affairs in violation of the First Amendment, we find no error.

App. A at 6a-7a; McEnroy v. St. Meinrad School of Theology, 713 N.E.2d 334, 337 (Ind. Ct. App. 1999).

Accordingly, the School timely and properly raised a federal question and this Court has jurisdiction to review the judgment on a writ of certiorari.

ARGUMENT FOR GRANTING THE WRIT

The decision below threatens the security of every single tenured professor at every religiously-affiliated school throughout the country. Accordingly, clarification of the law by this Court is of vital importance. Dr. McEnroy's dismissal involves nothing more than state tort and contract claims. However, hiding behind the guise of "canon law" the School seeks protection of the First Amendment. Rather than enforcing the terms of the parties' secular contract, the courts below ignored Dr. McEnroy's tenured status and misapplied the First Amendment.

The published decision of the Indiana Court of Appeals not only deviates from the intent of the First

Amendment but also conflicts in principle and undermines or distorts the precedential value of the Supreme Court cases of Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871), Employment Div., Department of Human Resources v. Smith, 494 U.S. 872 (1990), and City of Boerne v. Flores, Archbishop of San Antonio, 521 U.S. 507 (1997). The need for judicial guidance from this Court is acute because the issue presented here is one of first impression for this Court and is of extraordinary national importance and application.

I. When a Religious School Grants Tenure and Expressly Limits by Contract the Grounds for Dismissal, it is Bound by Those Contractual Terms.

While the School focused the courts below on the red herring of canon law rather than the clear secular protections freely guaranteed to Dr. McEnroy by her tenured status, such focus was improper because reliance on canon law had been already waived. Without citing any of the reasons tenured faculty could be terminated, and without following the process required under the Faculty Constitution, Dr. McEnroy's tenured position was terminated. Reverend Sweeney explicitly pointed to the 1992 Program of Priestly Formation as the grounds for Dr. McEnroy's termination. He claimed that signing the open letter constituted "public dissent" and that Dr. McEnroy suddenly became "seriously deficient" in her duty. (R. at 134). However, under the express terms of Dr. McEnroy's contract, the alleged "public dissent" did not provide any grounds, much less sufficient grounds, to remove her from her tenured faculty position. The decision below allowed the School to circumvent its own contract under the guise of "canon law."

Dr. McEnroy's contract explicitly stated that "The statements on academic freedom and responsibility, on appointment and dismissal contained in the Faculty Constitution are among the terms of appointment." App. D at 24a. (R. at 16, 283). Dr. McEnroy's contract, and the express provisions of the Faculty Constitution, were violated because the following is the exclusive list of the circumstances under which Dr. McEnroy, as a tenured faculty member, could be dismissed:

1. "Grave Cause"
   a. according to the 1940 AAUP Statement of Principles (R. at 296; §3.202);
   b. marriage of a priest (R. at 296; §3.203);
   c. excommunication (R. at 296; §3.204);

2. Grave financial emergency (R. at 296; §3.309);

3. Discontinuance of the teaching post (R. at 296; §3.309).

App. E at 43a-45a. Conspicuously absent from this list of reasons a tenured faculty member could be terminated is "public dissent," violation of canon law, or the whim of the Archabbot.

Pursuant to the Faculty Constitution, responsibility for hiring and firing within the School falls to Reverend Hensell as President-Rector, and must be based on the AAUP Statement of Principles. App. E at 42a-43a. (R. at 295-296). The decision to terminate Dr. McEnroy's contract of continuing appointment, however, was made by Reverend Sweeney, Archabbot of the Monastic Community at St.

Meinrad who was not even a party to Dr. McEnroy's contract of continuing appointment. (R. at 134).

The School does not pretend to be in compliance with the Faculty Constitution. Instead, in an effort to defend its summary dismissal of Dr. McEnroy, the School relies on the "Statement on Governance," which is contained in the Faculty Handbook, as distinguished from the Faculty Constitution. The "Statement" reads in part:

> The governance structure of Saint Meinrad School of Theology is established on an authoritarian (i.e., hierarchical) model because The Code of Canon Law and The Program of Priestly Formation of the National Conference of Catholic Bishops specify this model as operative in the juridical structure of the Seminary and in the execution of the duties of the Rector. By this model we mean that all decision-making and policy-making proper to the School of Theology as a whole is generally subject to the approval of the administration and specifically to the approval of the President-Rector. In particular, according to the Code of By-Laws of Saint Meinrad School of Theology Corporation, such power is vested in the final instance in the Board of Trustees. This model is in effect insofar as the chief administrator of the School of Theology, the President-Rector, delegated by the Board of Trustees to administer policy, and insofar as the jurisdiction of the Seminary comes directly under the local Ordinary of the place, the Archabbot of Saint Meinrad Archabbey, and

> indirectly under the local Ordinary of the territory, the Archbishop of Indianapolis.

(R. at 79).

The School attempts to make much of this "Statement" and the 1992 Program of Priestly Formation ("1992 PPF"). However, neither the 1992 PPF nor the Statement on Governance are incorporated into Dr. McEnroy's contract, and more significantly, neither are referenced in any form or fashion in the Faculty Constitution's list of particular circumstances that could result in the termination of a tenured faculty member. Accordingly, the School's reliance on the 1992 PPF and the Statement on Governance is misplaced, based on the express terms of the parties' contract.[4]

The decisions below referred to an alleged agreement by Dr. McEnroy that the Faculty Handbook, as well as the Faculty Constitution, was incorporated into her contract. A careful reading of the Record reveals that the Indiana Courts' statements in this regard are incorrect, resulting probably from a few imprecise references in earlier documents (*see* Dr. McEnroy's Complaint, R. at 6), seemingly equating the Faculty Constitution with the Faculty Handbook, whereas

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[4] The Faculty Handbook does not include the PPF text, let alone the 1992 version that was cited as the authority to terminate Dr. McEnroy's tenured position. The Faculty Handbook does, however, include the entire text of the 1940 AAUP Statement of Principles ("AAUP Statement") including Statements on Academic Freedom and Academic Tenure. (R. at 309-313). The AAUP is a secular national organization founded in 1915 which is dedicated primarily to the defense of academic freedom, due process, and speech as private citizens. The School freely adopted the AAUP Statement.

these early references should have referred solely to the Faculty Constitution. Such a restriction to the Faculty Constitution becomes clear on its face from a reading of Dr. McEnroy's own contract (*see* App. D. at 24a) and is further evidenced by Dr. McEnroy's affidavit filed with the trial Court. (R. at 276 ¶ 3).

Perhaps the referenced imprecise language in earlier documents was due, at least in part, to the fact that the Faculty Constitution, although a separate standalone document, was also reprinted and inserted into the Faculty Handbook. The Faculty Handbook contains sixteen (16) Institutional Policies and Procedures, only one (1) of which is the Statement on Governance. Others include "Course Numbering," "Student's Self-Evaluation Process," and "the Scholar Shop." It borders on the absurd for the School to select one provision of the entire Faculty Handbook and incorporate that one provision into the parties' contract, in spite of the clear provisions of the Faculty Constitution.

Unlike other faculty members, Monk-faculty were exempted from the tenure policy because it was feared that it could interfere with the monks' vow of obedience to the abbot and the abbot's power to assign monks to any position he wished (i.e., a hierarchical model). Dr. McEnroy, obviously not a monk, was not required to, and did not, take any vow of obedience to Reverend Sweeney, so he had no jurisdiction over her, as he had over Monk-faculty.

Similarly, Dr. McEnroy did not take any canonical oath nor any oath of fidelity to the School. Dr. Bernard Brandon Scott, the person responsible for drafting the Faculty Handbook and including the 1940 AAUP Statement, stated that the monastery conceded that the abbot, as abbot, did not have control over the School. (R. at 352-353). Neither the

monk's vow nor the Statement of Governance trump the explicit protections the Faculty Constitution and AAUP Statement provide to tenured faculty.

The School freely adopted the 1940 AAUP Statement including the following AAUP interpretive note: "Most church-related institutions no longer need or desire the departure from the principle of academic freedom implied in the 1940 Statement, and we do not now endorse such a departure." (R. at 311). Furthermore, Section 3.104 of the Faculty Constitution explains that "In the matter of faculty promotions and dismissals, the 1940 AAUP Statement of Principles is accepted and followed by the School." App. E at 42a. (R. at 295). In its dismissal of Dr. McEnroy, the School failed to comply with the AAUP Standards, which expressly provides for review by a faculty committee, an opportunity to be heard, a full stenographic record of the hearing, and testimony of other scholars. (R. at 310).

The 1940 AAUP Statement is not new to this Court. Indeed, this Court relied on the 1940 AAUP Statement as evidence that a religious school was "characterized by an atmosphere of academic freedom rather than religious indoctrination." Tilton v. Richardson, 403 U.S. 672, 681, (1971). *See also*, Roemer v. Board of Public Works of Maryland, 426 U.S. 736, 756 (1976) (relying, in part, on adoption of the 1940 AAUP Statement). The fact that the School adopted the 1940 AAUP Statement, represented that it did not endorse a departure from academic freedom, and listed exclusive dismissal grounds in the Faculty Constitution evidence the School's waiver of reliance on canon law.

The AAUP filed an *Amicus Curiae* brief on Dr. McEnroy's behalf in the Indiana Court of Appeals. The AAUP also placed the School on the AAUP's list of censured

schools as a direct result of the School's actions against Dr. McEnroy. App. F at 76a-77a. (R. at 327-28). Specifically, the AAUP found that the School violated the due process provisions of the AAUP Statement, the School's own Faculty Constitution, as well as Dr. McEnroy's academic freedom and her rights as a citizen as described in the Faculty Handbook. App. F at 76a-77a. (R. at 328).[5]

Where the circumstances surrounding the creation of the employment relationship and/or the contract itself indicate that the parties intended that the contract be based on secular rights, a court should hold that reliance on canon law is waived. Welter v. Seton Hall University, 608 A.2d 206, 215 (N.J. 1992). This Court need not rule on any person's correctness or genuineness of religious belief. As the Welter court stated:

> Even if defendants sincerely believed that canon law required immediate termination contrary to the contract's express requirements, they entered a contract with plaintiffs that included no provision protecting that belief. . .
>
> Although we do not question the University's general commitment to Canon Law, we are mindful that in creating a bargained-for

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[5] Initially, in 1996, the AAUP issued a report concerning Dr. McEnroy's termination in *Academe*, a secular academic journal. (R. at 316-325). This report found that the School violated both the due process provisions of the AAUP Statement and its own Faculty Constitution. The report was issued after an AAUP investigation that was limited to purely secular facts.

> obligation to adhere to procedural safeguards . . . [defendant]. . . acknowledged that any dispute with the Welters arising out of the employment relationship would be governed by those express contract provisions.

Id. at 217.

The School is not above the law. It is an entity that can sue and be sued. Even a religious organization is free to burden its activities voluntarily through contracts, and such contracts are enforceable in a civil court, so long as there is no searching and impermissible inquiry into church doctrine. *See,* Watson v. Jones, 80 U.S. (13 Wall.) 679 (1871). Dr. McEnroy's secular rights provided by her contract were vested rights. Civil courts have jurisdiction to enforce vested secular contract rights, and therefore, the courts below erred in dismissing Dr. McEnroy's complaint.

Furthermore, Dr. McEnroy did not contemplate and could not reasonably have contemplated that the School would subsequently attempt to incorporate canon law into her tenured contract to supersede her express contractual safeguards. (R. at 278-279). Since the parties' contract explicitly spelled out the limited reasons for dismissal of tenured faculty, it by necessity did not incorporate canon law, and such incorporation could not have been reasonably contemplated.

If the decision of the Indiana Court of Appeals is allowed to stand, no tenured professor at any religious school in the entire nation will be secure.

II. Dr. McEnroy's Claims are Based Purely on Contract Law Related to Her Tenure and Termination; Accordingly, a Court May Resolve Those Claims Under Neutral Principles of Law.

Although the School has consistently attempted to frame Dr. McEnroy's termination as a decision based on "church law," she has never requested the courts to decide the correctness of an ecclesiastical issue. Further, Dr. McEnroy does not seek reinstatement, and therefore this Court is not asked to usurp the School's role in determining whom it will hire. Dr. McEnroy's contract claims may, and should, be resolved under neutral principles of law.

Courts readily distinguish between "correctness" under religious law and "authority" under contract law. *See* Vincent v. Raglin, 318 N.W.2d 629 (Mich. Ct. App. 1982) (pastor entitled to present case to jury as to whether church trustees had authority to dismiss his pastorate; a controversy involving a church is not immune from judicial review unless adjudication of the controversy would require an assessment of the propriety of an action by the church); Bodewes v. Zuroweste, 303 N.E.2d 509 (Ill. Ct. App. 1973) (Catholic priest defeated Bishop's motion to dismiss action for breach of agreement for payment of salary); Abyssinia Missionary Baptist Church v. Nixon, 340 So.2d 746 (Ala. 1976) (trial court erred in dismissing action by church members for wrongful expulsion from membership); Baugh v. Thomas, 265 A.2d 675 (N.J. 1970) (civil courts have jurisdiction to determine whether established procedures of a religious organization were followed); *See also*, Salzgaber v. First Christian Church, 583 N.E.2d 1361 (Ohio Ct. App. 1989) (although no jurisdiction over claim of removal for "just

cause," court did have jurisdiction over claim involving purely secular contract provision).

Since Dr. McEnroy is not contesting the religious correctness of the decision to dismiss her,[6] but is rather merely contesting the authority to terminate her contract of continuing appointment, the trial court had jurisdiction over her claim. The cases cited immediately above all recognize that civil courts may not interpret church doctrine, but they also make clear that:

> The "wall of separation" theory urged by appellees is a generalized statement of a principle, which like most principles of law,

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[6] For the purposes of this case only, Dr. McEnroy informed the courts below that she was even willing to allow the courts to assume that all church law positions taken by the School were religiously correct. Even assuming that the Statement on Governance permitted Reverend Sweeney to use a version of the PPF that was not even in effect when Dr. McEnroy became a tenured professor and was never incorporated into the parties' contract, and even assuming further that Reverend Sweeney came to the correct *religious* conclusions, the simple fact remains that the School, under its contract with Dr. McEnroy, did not have the right to dismiss her. The "church" and/or the Archabbot are free to come to any religious conclusions they wish, but they do not have the authority to impose those conclusions summarily on tenured faculty. Only the explicit reasons set forth in the Faculty Constitution authorize dismissal. Similarly, whether signing the open letter was "public dissent" is not the issue of this case; the real issue is whether "public dissent" provided grounds *under the terms of Dr. McEnroy's tenured contract* to terminate Dr. McEnroy's employment without any due process and without regard to the Faculty Constitution or AAUP Statement.

> has recognized exceptions. The primary objectives of the First Amendment were to assure that freedom of worship would not be interfered with by the government, that the government would not adopt a state religion, and that it would not in any way recognize one religion over another. *It was not the intent of that amendment, and it has been so held in many cases, that civil and property rights should be unenforceable in the civil court simply because the parties involved might be the church and members, officers, or the ministry of the church.* It was not intended as a shield to payment of a just debt when the purpose of the First Amendment is not being violated.

Bodewes, 303 N.E.2d at 511 (emphasis added).

The distinction between *authority*, under contract, and *correctness*, under church law, is consistent with this Court's rule established in Employment Div., Dep't of Human Resources v. Smith, 494 U.S. 872 (1990). In Smith, this Court distinguished between the freedom to believe and the freedom to act. Id. 879-80. The School, Reverend Hensell, and Reverend Sweeney are free to hold whatever religious beliefs they choose, but they are not free to breach Dr. McEnroy's contract of continuing appointment. To hold otherwise would "make the professed doctrines of religious belief superior to the law of the land" (Id. at 879), and would make contracts with tenured professors such as Dr. McEnroy's completely illusory. As explained in Smith, laws "are made for the government of actions, and while they cannot interfere with mere religious beliefs and opinion, they may with practices." Id. at 879. The courts below

committed reversible error by relying on the First Amendment to defeat jurisdiction.

Contract law is neutral law that applies equally to all persons and entities. As such, this Court may enforce a contract freely entered into between a religious school and a professor. The fact that a religious school actually must comply with its own contractual obligations may impose some burden, but under Smith, it is perfectly constitutional to burden a religious school with neutral laws of general applicability, since any burden is equal as to all citizens. "When the exercise of religion has been burdened in an incidental way by a law of general application, it does not follow that the persons affected have been burdened any more than other citizens, let alone because of their religious beliefs." City of Boerne v. Flores, Archbishop of San Antonio, 521 U.S. 507, 535, 117 S. Ct. 2157 (1997). The courts of Indiana have considered, and where warranted, adopted this neutral principles approach in resolving such disputes. *See e.g.*, Konkle v. Henson, 672 N.E.2d 450, 455 (Ind. Ct. App. 1996); Grutka v. Clifford, 445 N.E.2d 1015, 1018-19 (Ind. Ct. App. 1983); Marich v. Kragulac, 415 N.E.2d 91, 96 (Ind. Ct. App. 1981).

The neutral principles approach is applicable, not only to church property disputes, but also to employment disputes. Reardon v. Lemoyne, 454 A.2d 428 (N.H. 1982). That court stated: "In religious controversies involving property or contractual rights outside the doctrinal realm, a court may accept jurisdiction and render a decision without violating the first amendment." Id. at 431 (citations omitted). The New Hampshire Supreme Court held that the trial court erred in refusing to accept jurisdiction over the Catholic Bishop, Superintendent of Schools and the School Board Members. Id. at 432. The court rejected the defendants' contention that

the plaintiffs' suit be dismissed because they failed to exhaust their remedies through the Church's internal dispute resolution process. Id. at 433. In rejecting this contention, the court noted that the plaintiffs had requested, but were not granted, a hearing before the Diocesan School Board. Id. In Dr. McEnroy's case, of course, the School failed to follow established due process procedures in the Academic Tenure section of the Faculty Handbook which provided for a hearing, stenographic recording, faculty review, and testimony of scholars. (R. at 310).

The "highest church judicatory" rule proffered by the School is inapplicable because this case does not fit into the set of issues reserved solely for religious adjudication. This case presents purely secular issues based on purely secular contract rights. Contract and tort issues are clearly triable in a court of law without interference from religious arguments. It does not matter whether Reverend Sweeney's conclusion was correct or incorrect because *under the parties' contract,* there were no grounds for dismissal. This court need only review the contract.

Furthermore, the "highest church judicatory" rule does not prohibit a civil court from hearing this case because, as explained in detail above, Dr. McEnroy is not contesting the *correctness*, based on religion, of the School's actions. "The Church" had no contractual authority over Dr. McEnroy's contract or termination, nor did it have any role in her appeal because the breach of her contract was not a church matter -- there was no reason for Dr. McEnroy to appeal a contract matter to the Church. It is entirely within the proper role of a civil court to interpret what process is due under secular provisions of a contract and whether those provisions were disregarded.

The second aspect of the First Amendment claimed to be implicated in this case is the Establishment Clause: "Congress shall make no law respecting an establishment of religion . . ." U.S. Const., Amend. 1. However, allowing Dr. McEnroy to proceed with her generally applicable contract and tort claims will not violate the Establishment Clause.

"Excessive Entanglement" which may result in an Establishment Clause violation basically refers to the situation where church and state are pitted as adversaries or where the state is called on to choose between competing religious views. An earlier Indiana Court of Appeals case which involved the excessive entanglement issue was Konkle v. Henson, 672 N.E.2d 450 (Ind. Ct. App. 1996) (review of claims did not require inquiry into religious doctrine or practice, so the court applied "secular standards to secular conduct"). Konkle stated that there is only excessive entanglement when "courts begin to review and interpret a church's constitution, laws, and regulations." Id. at 454 (citations omitted). Since this Court need not review or interpret any such constitution, law, or regulation, there is no excessive entanglement.

In the matter at bar the trial court was merely asked to apply generally applicable and neutral contract and tort law not to a *religious* decision, but rather to the termination of Dr. McEnroy's tenured position at the School in violation of the secular provisions of the parties' contract. Entanglement cannot be claimed by an entity which adopted secular provisions regarding tenure, academic freedom, and due process.

Singleton v. Christ the Servant Evangelical Lutheran Church, 541 N.W.2d 606 (Minn. Ct. App.), *cert. denied*, 117

S. Ct. 184 (1996), recognizes that plaintiffs such as Dr. McEnroy should not be denied being heard in court by a defendant's motion to dismiss, even if a subsequent motion for summary judgment might be successful. Id. at 612. In other words, Dr. McEnroy should be given a chance to prove her claim based on neutral principles of law, and in the event that ecclesiastical matters become indispensable, which will not occur in the case at bar, a motion for summary judgment may be filed. Id. (citing Minker v. Baltimore Annual Conf., 894 F.2d 1354, 1359-61 (D.C. Cir. 1990) ("appellant is entitled to prove up his claim of breach of oral contract to the extent that he can divine a course clear of the Church's ecclesiastical domain")).

III. The Question Presented is of National Import Because of its Critical Implications for Tenured Faculty at Schools with Religious Ties.

The Indiana Court of Appeals improperly decided an important question involving the effect of the First Amendment on contracts between schools with religious ties and their tenured faculty. This decision not only affects Dr. McEnroy, but also all tenured faculty members at schools with religious ties throughout the nation. Dr. McEnroy's case has significant ramifications beyond her termination. Dr. McEnroy and the School freely entered into a contract pertaining to her tenured status. However, the School has been allowed to ignore the express terms of Dr. McEnroy's tenure contract, essentially by asserting that the School's religious ties trump the contract's express terms, guarantees, and protections. On that basis, her tenure contract was rendered illusory and provided her none of the certainty which contracts, by their very nature, are designed to offer.

As the AAUP's *Amicus* Brief filed in the Indiana Court of Appeals stated:

> By declining subject matter jurisdiction, the trial court essentially renders meaningless the provisions of the employment contract between Professor McEnroy and the School. *The fact that the School has a religious affiliation does not bar the institution from entering into legally enforceable contracts with faculty members, acting in accord with those contracts, or observing basic principles of academic freedom and due process incorporated in the contracts.*

Brief of *Amicus Curiae*, The American Association of University Professors filed in the Court of Appeals of Indiana, at 2 (emphasis added). ("AAUP *Amicus* Brief").

The decision below has far-reaching significance within higher education, and the undertones are ominous for tenured faculty at any school having religious ties or affiliations. Dr McEnroy's situation is representative of the future conflicts between contractually-protected faculty members and any school with religious ties. If the Indiana Court of Appeals' published opinion is allowed to stand, dangerous First Amendment precedent will be set for such schools and faculties throughout the country. The AAUP recognized this, stating:

> The limitations clause in the 1940 *Statement of Principles* balances the autonomy of church-related institutions with the individual rights of their faculty members. *If courts are unwilling to examine whether the reason proffered by a*

> *church-related institution for breaching a faculty member's contract is in fact in accord with the contract, then virtually all contracts entered by such institutions with faculty members can essentially be rendered legally unenforceable at the whim of institutional administrators or church officials.* Many religiously affiliated institutions have explicitly incorporated AAUP policies into their faculty handbooks just as the School chose to do here. *Resolution of this case does not require interpretation of church doctrine; it requires nothing more than interpretation of legally binding contractual provisions and the nature and extent of the limitations upon those provisions imposed by the parties' mutual assent.*

AAUP *Amicus* Brief at 7 (emphasis added).

If the published Indiana Court of Appeals decision is allowed to stand, whim and caprice disguised as canon law decisions could govern tenured faculty dismissals rather than the actual terms to which the parties agreed.

Further, a decision by this Court to hear this matter would result in uniformity among lower courts addressing the same or similar issues. Schools with religious ties can be found throughout the nation, and under the Indiana decision, the First Amendment's application to contractual issues involving schools with such affiliations will be decided on a piecemeal, *ad hoc* basis. Decisions involving religion in any form are often viewed by courts as taboo, even if contracts, universally recognized as appropriate subjects for court consideration, are involved. Yet the availability of court

redress vitally affects fundamental matters such as the certainty contracts should provide and the ability of professors nationwide to make decisions about where to teach based on what is represented to them through contracts for employment. For all those reasons, clear guidance from this Court would provide lower courts with important direction as to matters similar to the instant case, and a decision by this Court would bring much-needed certainty and uniformity to this area. This case presents an opportunity for this Court to address a matter of compelling importance to those in academia nationwide.

CONCLUSION

The decision of the Indiana Court of Appeals in this case is inconsistent with the intent of the First Amendment and unduly broadens that amendment. The decision below also guts this Court's precedent in Employment Div., Dep't of Human Resources v. Smith, 494 U.S. 872 (1990) regarding the freedom to believe and the freedom to act. The trial court had jurisdiction because Dr. McEnroy's claim focuses on the School's *authority*, under her contract, rather than the *correctness*, under church law, of its actions. The Faculty Constitution listed the exclusive reasons a tenured professor could be dismissed without any reference to canon law. Free exercise is not burdened since this case only involves neutral laws of general applicability, and there is no excessive entanglement because this Court is not being asked to determine whether anyone departed from religious doctrine.

As a result of the decision below, Dr. McEnroy's tenured status -- and the tenured status of professors at all religious schools -- is completely illusory. The decision below is inconsistent with the First Amendment and sets

dangerous precedent. Supreme Court guidance is necessary and critical to prevent religious schools from exaggerating the application of the First Amendment and from eviscerating the purposes of tenured status, namely, employment security and academic freedom.

The Petition for a Writ of Certiorari should be granted. Otherwise, this Court will suffer the confusion which will arise in the courts of this land with respect to the proper scope of the First Amendment and this Court may be viewed as sanctioning constructive reversal of any distinction between the freedom to believe and the freedom to act.

Respectfully submitted,

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APPENDIX A

IN THE COURT OF APPEALS OF INDIANA

[Filed June 24, 1999]

No. 74A01-9803-CV-123

DR. CARMEL McENROY,
Appellant-Plaintiff,

v.

ST. MEINRAD SCHOOL OF THEOLOGY, RT. REVEREND TIMOTHY SWEENEY, O.S.B., and REVEREND EUGENE HENSELL, O.S.B.,
Appellees-Defendants.

APPEAL FROM THE SPENCER CIRCUIT COURT
The Honorable Wayne A. Roell, Judge
Cause No. 74C01-9705-CP-193

OPINION - FOR PUBLICATION

RUCKER, Judge

Appellant-Plaintiff Dr. Carmel McEnroy ("Dr. McEnroy") filed an action against St. Meinrad School of Theology, Reverend Timothy Sweeney, and Reverend Eugene

Hensell (collectively referred to as "Defendants"), asserting breach of contract, tortious interference with contractual relations and breach of an implied covenant of good faint and fair dealing. Defendants responded by filing a motion to dismiss for lack of subject matter jurisdiction, asserting that resolution of this action would excessively entangle the court in religious matters in violation of the First Amendment. The trial court granted Defendants' motion. Dr. McEnroy raises four issues for our review, which we consolidate and restate as did the court commit reversible error in so doing. We affirm.[1]

The facts giving rise to this appeal are these. Dr. McEnroy was employed as a professor of Catholic theology and doctrine at Saint Meinrad School of Theology ("Saint Meinrad"). Saint Meinrad is a Catholic Seminary which serves to train candidates for the priesthood and other ministries of the Roman Catholic Church. At all times relevant to this action, the archabbot of St. Meinrad Archabbey was Father Timothy Sweeney ("Archabbot Sweeney"). Father Eugene Hensell ("Father Hensell") was President-Rector of Saint Meinrad.

In the spring of 1994, Pope John Paul II issued an Apostolic Letter declaring this issue of the ordination of women as priests resolved and no longer open to debate. Several months after the statement was issued, Dr. McEnroy joined 1,500 other in signing an open letter opposing the Pope's teachings on the subject. After reading the open letter in the National Catholic Reporter, Archabbot Sweeney

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[1] This court heard oral argument on May 18, 1999.

determined that Dr. McEnroy had become "seriously deficient" in her duties as a seminary professor by publically dissenting from the Pope's teachings, and that the Church's canon law required that he remove her from the faculty at Saint Meinrad. Pursuant to his jurisdiction over Saint Meinrad provided by the Statement of Governance and contained in the Faculty Handbook, Archabbot Sweeney directed Father Hensell to so remove Dr. McEnroy. He did so and as a result, Dr. McEnroy filed suit against Defendants, asserting breach of contract, intentional interference with contractual relations, and breach of an implied covenant of good faith and fair dealing.[2] Defendants responded by filing a motion to dismiss pursuant to Ind. Trial Rule 12(B)(1). The motion argued that the court lacked subject matter jurisdiction "because [resolution of] these clams would require the Court to decide religions issues regarding the Church's good faith motivation and doctrinal basis for removing her under the cannon law." R. at 38. After a hearing, the trial court granted the motion. This appeal ensued in due course.

A motion to dismiss for lack of subject matter jurisdiction presents a threshold question concerning the court's power to act. Tapia v. Heavner, 648 N.E.2d 1202, 1205 (Ind. Ct. App. 1995). When confronted with a motion to dismiss based on a lack of subject matter jurisdiction, the trial court must decide upon the complaint, motion and any affidavits or other evidence submitted whether it possesses

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[2] We note that prior to instituting the present action, Dr. McEnroy filed sex discrimination actions based on these same facts with the federal district court and the Equal Employment Opportunity Commission. Both actions were dismissed for lack of jurisdiction.

authority to further adjudicate the action. Common Council of City of Hammond v. Matonovich, 691 N.E.2d 1326, 1328 (Ind. Ct. App.1998), trans. denied. Unlike ruling on a motion for summary judgment, the trial court may weigh evidence and resolve factual disputes when ruling on a motion for subject matter jurisdiction. Tapia, 648 N.E.2d at 1205. Where, as here, the facts are not in dispute, we review the trial court's decision de novo. Matonovich, 691 N.E.2d at 1328.

Citing the Supreme Court's decision in Employment Div., Dep't of Human Resources v. Smith, Dr. McEnroy contends that the trial court could avoid violating the First Amendment's prohibition against excessive entanglement by applying neutral principles of contract law. 494 U.S. 872, 110 S. Ct. 1595, 108 L.Ed.2d 876 (1990) (civil courts do not inhibit the free exercise of religion where neutral principle of law may be applied). Dr. McEnroy premises this contention on the twin assertions that the contract granting her continuing appointment status and the Faculty Constitution provide the exclusive circumstances under which she may be dismissed, and that the issue may be resolved without reference to either church law or doctrine. Saint Meinrad counters that Dr. McEnroy's contract also incorporated the terms of the Faculty Handbook, which included the Statement on Governance. The Statement on Governance in turn "provides that the seminary operates through an hierarchical model in the administration of justice as specified by the Church's canon law and its Program of Priestly Formation ("PPF"), and that the Archabbot retains direct jurisdiction over Saint Meinrad within that model," including the authority to remove a seminary professor who is determined to be seriously deficient. R. at 434.

The Supreme Court has long held that the First Amendment requires civil courts to refrain from interfering in matters of church discipline, faith, practice and religious law. Watson v. Jones, 80 U.S. (13 Wall) 679, 727, 20 L.Ed. 666 (1871). Thus, civil courts are precluded from resolving disputes involving churches if "resolution of the disputes cannot be made without extensive inquiry . . .into religious law and polity. . . ." Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709, 96 S. Ct. 2372, 2380, 49 L.Ed.2d 151 (1976). Consequently, the First Amendment proscribes intervention by secular courts into many employment decisions made by religious organizations based on religious doctrines or beliefs. Accordingly, personnel decisions are protected from civil court interference where review by civil courts would require the courts to interpret and apply religious doctrine or ecclesiastical law. Milivojevich, 426 U.S. at 696, 96 S. Ct. at 2372. (review of church's decision to defrock bishop impermissible where resolution required interpretation of internal church procedures).

The contract granting Dr. McEnroy continuing appointment stated, in relevant part, "[t]he statements on academic freedom and responsibility, on appointment and dismissal contained in the Faculty Constitution are among the terms of appointment." R. at 283 (emphasis added). Use of the term "among" here creates an ambiguity made evident upon examination of the arguments raised by the parties. Defendants contend the term implies the existence of additional terms, specifically the Faculty Handbook and statement on Governance. Dr. McEnroy, on the other hand, argues that the Faculty Constitution provide the sole term of her contract. At oral argument before this court, Dr.

McEnroy stated that the phrase "among the terms of appointment," could not refer to documents not specifically mentioned, and therefore refers to the terms of appointment and dismissal as set forth in the Faculty Constitution. When confronted with an ambiguous contract, this court attempts to determine the intent of the parties at the time of formation as disclosed by the language used to express the parties' respective rights and duties. Barrington Mgmt. Co., Inc. v. Draper Family Ltd., 695 N.E.2d 135, 140 (Ind. Ct. App. 1998). Where, as here, the ambiguity arises from the language employed rather than because of extrinsic facts, its construction is a question of law to be determined by the court. I.C.C. Protective Coatings, Inc., v. A.E. Staley Mfg. Co., 695 N.E.2d 1030, 1034 (Ind. Ct. App. 1998), trans. denied. We will read the contract as a whole and accept an interpretation which harmonizes and gives effect and meaning to the contract's words and phrases. Barrington, 695 N.E.2d at 140.

Applying these principles to the contract before us, we find that by declaring the statement on academic freedom and responsibility contained in the Faculty Constitution to be "among the terms of appointment," the parties intended to signify that additional terms were also to apply. The contract does not state what additional terms were intended to apply or their relation to those contained in the Faculty Constitution. We observe, however, that the parties agreed before the trial court the Faculty Handbook, which includes among other things the Statement on Governance, was also incorporated into the contract at trial. In light of the Statement on Governance, resolution of Dr. McEnroy's claims would require the trial court to interpret and apply religious doctrine and ecclesiastical law. At a minimum, the trial court would

have to determine whether: (1) Archabbot Sweeney properly exercised his jurisdiction over Saint Meinrad, (2) Dr. McEnroy's conduct constituted public dissent or caused her to be "seriously deficient," and (3) canon law required Archabbot Sweeney to remove Dr. Sweeney from her teaching position. Because the trial court would be clearly and excessively entangled in religious affairs in violation of the First Amendment, we find no error.

Judgment affirmed.

DARDEN, J., concurs.

SULLIVAN, J., concurs in result with opinion.

IN THE COURT OF APPEALS OF INDIANA

[Filed June 24, 1999]

No. 74A01-9803-CV-123

DR. CARMEL McENROY,	)
Appellant-Plaintiff,	)
	)
v.	)
	)
ST. MEINRAD SCHOOL OF THEOLOGY, RT. REVEREND TIMOTHY SWEENEY, O.S.B., and REVEREND EUGENE HENSELL, O.S.B.,	)
Appellees-Defendants.	)
	)

SULLIVAN, Judge, concurring in result

While it may be patently discriminatory to terminate a tenured faculty member, who happens to be a Catholic, while not permitting termination of a tenured faculty member who embraces a different religious faith, such discrimination is constitutionally protected.

This anomalous and seemingly unjust result is dictated by the interpretation given over the years to the prohibition against the judiciary from "interfering" in matters of religious dogma or discipline. This prohibition would seem to control even where the discrimination is patent. It requires us to affirm the finding that a faculty member is rendered unfit to

teach solely by dint of her public disagreement with a particular teaching of the Church.[3] In this case, the teaching is that ordination of women is contrary to moral law as interpreted by the papal encyclical. Furthermore, our decision is compelled whether or not the divergence of philosophical or theological view is reflected in the classroom.

Dr. McEnroy was terminated because her signature to the public letter, along with that of some fifteen hundred others, rendered her, in the opinion of Archabbot Sweeney,

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[3] The factual determinance of Dr. McEnroy's "serious deficiency" and unfitness is premised upon reliance upon a provision of the canon law's Program of Priestly Formation, which states that seminary faculty are to "set forth Catholic doctrine as formulated by the authoritative teaching office of the Church" taken in conjunction with a cannon law provision which requires removal of a seminary professor who is "seriously deficient in his or her duty." Record at 71-72, 434.

An analytical gap appears between the first principle of doctrinal conformance and the second principle relating to deficiency in one's teaching duties unless the area of doctrinal conformity or the lack thereof, in some way impacts the educational communication of subject matter and methodology from the professor to the student. Stated conversely, unless the professor in the academic setting sets forth a doctrine contrary to that of the Church, it is difficult to ascertain how she is rendered "seriously deficient" in her teaching duties.

In final analysis, the determination necessarily rests upon the rationale that if the Church official says the professor is deficient in her teaching duties because of a doctrinal dispute unrelated to the classroom, it must be so.

"'seriously deficient' in her duties as a seminary professor." Slip op. at 3. I find no evidence permitting even an inference that Dr. McEnroy, by reason of her personal position on the issue, had become less efficient or conscientious in her teaching methods or in the presentation of the classroom subject matter within her duties. Nevertheless, it was concluded that the Church's canon law required her removal.

Be that as it may, this case rests upon the proposition that the Church may discipline and sanction its own faithful as it sees fit without regard to concepts of discriminatory conduct which would otherwise be unlawful. This deemed an internal hierarchical discipline dispute in which the judiciary may not become involved.

It is for this reason that we are forbidden to apply common law contractual principles to the matter of Dr. McEnroy's tenured employment. It is for this reason that I am compelled to concur.

APPENDIX B

IN THE SUPREME COURT OF INDIANA

[Filed November 19, 1999]

No. 74A01-9803-CV-123

DR. CARMEL McENROY
Appellant (Plaintiff Below),

v.

ST. MEINRAD SCHOOL OF THEOLOGY, RT. REVEREND TIMOTHY SWEENEY, and REVEREND EUGENE HENSELL,
Appellees (Defendants Below)

ORDER

This matter comes before the Indiana Supreme Court on a Petition To Transfer from a decision of the Court of Appeals, pursuant to Indiana Appellate Rule 11(B). The Court has reviewed the decision of the Court of Appeals, the Record of Proceedings, the Briefs which were filed in the Court of Appeals, and the materials which were submitted in connection with the request to transfer jurisdiction. Each member of the Court has voted on the case.

Being duly advised, the Court now DENIES the Appellant's Petition To Transfer this 19th day of November, 1999.

/s/ Randall T. Shepard
Randall T. Shepard
Chief Justice of Indiana

Dickson, Sullivan, and Boehm, JJ., concur.

APPENDIX C

IN THE SPENCER CIRCUIT COURT
STATE OF INDIANA
COUNTY OF SPENCER

[Filed February 23, 1998]

No. 74C01-9705-CP-193

DR. CARMEL McENROY,
Plaintiff,

v.

SAINT MEINRAD SCHOOL OF THEOLOGY, FATHER TIMOTHY SWEENEY, O.S.B., and FATHER EUGENE HENSELL, O.S.B.,
Defendants.

ENTRY OF DISMISSAL

This matter came before the Court on the August 8, 1997, motion of the defendants, Saint Meinrad School of Theology ("Saint Meinrad"), Father Timothy Sweeney, O.S.B. ("Archabbot Timothy"), and Father Eugene Hensell, O.S.B. ("Father Eugene"), to dismiss this action for lack of subject matter jurisdiction pursuant to Trail Rule 12(B)(1) of

the Indiana Rules of Procedure. Having considered the parties' briefs and evidentiary submissions and being duly advised, the Court now finds that:

1. Saint Meinrad is a Roman Catholic seminary. Its purpose is to train candidates for the priesthood and other ministries in the Roman Catholic Church (the "Church"). At all times relevant to this action, Archabbot Timothy was the Archabbot of Saint Meinrad Archabbey (the "Archabbey"). Saint Meinrad is a work of the Archabbey. Father Eugene served as President-Rector of Saint Meinrad.

2. The plaintiff, Sister Carmel McEnroy, R.S.M., Ph.D. ("Dr. McEnroy"), was a professor of systemic theology at Saint Meinrad. Her job was to teach Catholic theology and doctrine to candidates for ministry, including men who wanted to become priests.

3. The parties agree that Dr. McEnroy's contract of employment at Saint Meinrad incorporated the terms of Saint Meinrad's Faculty Handbook, which includes among other things a Statement on Governance ("Governance Statement"). The Governance Statement provides that the seminary operates through an hierarchical model in the administration of justice as specified by the Church's canon law and its Program of Priestly Formation ("PPF"), and that the Archabbot retains direct jurisdiction over Saint Meinrad within that model.

4. Defendants have referred the Court to (a) a provision of the PPF, which states that seminary faculty are to "set forth Catholic doctrine as formulated by the authoritative teaching office of the Church" and (b) a

provision of the canon law, which states that the responsible Church official must remove a seminary professor who is "seriously deficient in his or her duty. . . . " (Verified Declaration of Father Aelred Cody at ¶¶ 4-5.) Dr. McEnroy does not dispute that defendants' citations are accurate.

5. In the Spring of 1994, Pope John Paul II issued a letter declaring that the Church cannot ordain women as priests, that the matter is now "definitively closed," and that the Church faithful are not to discuss the matter further. In November of 1994, Dr. McEnroy and others signed an open letter to the Pope opposing the Pope's teaching on women's ordination; that letter was published as a full-page advertisement in a non-church sanctioned, national publication titled The National Catholic Reporter.

6. Archabbot Timothy read the open letter and concluded that it constituted public dissent from the Pope's teaching, that Dr. McEnroy's signing the letter made her "seriously deficient" in her duty as a seminary teacher, and that the Church's canon law required him to remove her from her position as a professor of systemic theology. Pursuant to his jurisdiction retained in the Faculty Handbook, Archabbot Timothy therefore directed Father Eugene to remove Dr. McEnroy from the faculty, and Father Eugene did so.

7. In the affidavit she filed in this Court, Dr. McEnroy disagreed with Archabbot Timothy's conclusions and the conclusion of a committee of the National Conference of Catholic Bishops that, by dissenting from Catholic doctrine, Dr. McEnroy forfeited her right to teach doctrine in a Roman Catholic seminary. Dr. McEnroy asserts that Archabbot Timothy did not conduct a proper "canonical

investigation" about whether she dissented from the Pope's teaching. Dr. McEnroy also submitted to this Court the opinion of the Catholic Theological Society of America that she did not dissent; that opinion relies upon the instruction Donum Veritatis IV, B, of the Vatican's Congregation on the Doctrine of the Faith and concludes that Dr. McEnroy is still "a Catholic theologian in good standing."

8. Rather than appeal within the Church Archabbot Timothy's decision to remove her, as she could have done, Dr. McEnroy filed a claim with the Equal Employment Opportunity Commission ("EEOC") alleging that Saint Meinrad had discriminated against her on the basis of her sex. The EEOC dismissed Dr. McEnroy's claim, concluding that it lacked jurisdiction because the actions leading to her dismissal were "clearly a matter of theological dispute."

9. Dr. McEnroy then filed an action against Saint Meinrad and Archabbot Timothy in the United States District Court for the Southern District of Indiana. That Court also dismissed Dr. McEnroy's sex-discrimination claims because it lacked jurisdiction. The Court held that, as a theology professor at a seminary, Dr. McEnroy was within the "ministerial exception" to Title VII of the Civil Rights Act, and that the Court therefore could not apply Title VII to Dr. McEnroy's relationship with Saint Meinrad. The Court also dismissed Dr. McEnroy's state law claims without prejudice because it lacked jurisdiction to address them once the federal claims were dismissed.

10. Dr. McEnroy then filed this action, asserting claims for (a) breach of contract, (b) tortious interference with

contractual relations, and (c) breach of an implied covenant of good faith and fair dealing. This Court lacks subject matter jurisdiction to adjudicate these claims.

11. The parties agree that civil courts have no jurisdiction to decide whether the conduct of a church member departs from the requirements of religious doctrine or law. See, e.g., Watson v. Jones, 80 U.S. 679 (1871); Presbyterian Church v. Mary Elizabeth Blue Hull Memorial Presbyterian Church, 393 U.S. 440 (1969); Jones v. Wolf, 443 U.S. 595 (1979). Instead, civil courts must defer to the church's decision on such issues:

> whenever the questions of discipline or of faith, or ecclesiastical rule, custom or law have been decided by the highest of these church judicatories to which the matter has been carried, the legal tribunals must accept such decisions as final, and as binding on them, in their application to the case before them.

Watson, 80 U.S. at 727. Both parties have also cited law holding that while civil courts may decide those aspects of civil property disputes between church members that can be resolved by applying neutral principles of secular law, they may not decide aspects of the case that can be resolved only through interpretation of religious doctrine or law. Reardon v. Lemoyne, 454 A.2d 428, 433 (N.H. 1982); Jones, 443 U.S. at 602. Instead, the First Amendment "requires that civil courts defer to the resolution of issues of religious doctrine or polity by the highest court of a hierarchical church organization." Jones, 443 U.S. at 602.

12. This rule applies in our State's courts as well. "Excessive entanglement occurs when the courts begin to review and interpret a church's constitution, laws, and regulations." Konkle v. Henson, 672 N.E.2d 450, 454 (Ind. Ct. App. 1996). "The First Amendment prohibits courts from resolving doctrinal disputes or determining whether a religious organization acted in accordance with its canons and bylaws." Id.

13. Resolving Dr. McEnroy's claim that Saint Meinrad breached her contract by following the Archabbot's canonical judgment would require this Court to determine whether Archabbot Timothy properly exercised his religious jurisdiction over Saint Meinrad expressly retained in Dr. McEnroy's contract. At a minimum, this Court would have to decide whether Dr. McEnroy's conduct constituted dissent from the Pope's teaching, whether such dissent caused her to be "seriously deficient" in her duty as a seminary professor under Church canon law, and whether Archabbot Timothy was required by Church canon law to remove her as a result. Deciding whether Dr. McEnroy or the defendants are correct about those issues of church doctrine would excessively entangle the Court in religion in violation of the Establishment Clause. Konkle, 672 N.E.2d at 454. As a result, this Court must accept as final the decision of the highest church official who has decided these religious issues. Jones, 443 U.S. at 602; Watson, 80 U.S. at 727. Archabbot Timothy is the highest church official to whom this matter

was carried because Dr. McEnroy did not appeal his decision within the Church, as she had the right to do under the canon law. Thus, under the First Amendment, Archabbot Timothy's decision that the canon law required Dr. McEnroy's removal is binding upon this Court.

14. There is a second reason why this Court lacks jurisdiction over Dr. McEnroy's contract claim. The United States Supreme Court has held that the First Amendment protects a church's right to select and discipline its ministerial employees. Kedroff v. Saint Nicholas Cathedral, 344 U.S. 94, 112-16 (1952); Kreshik v. Saint Nicholas Cathedral, 363 U.S. 190 (1960); Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976) ("Serbian Church"). In Kedroff, for example, the Court held that churches have the power to decide for themselves "matters of church government as well as those of faith and doctrine" and concluded that the Free Exercise Clause protects a church's freedom to select its own clergy. Kedroff, 344 U.S. at 115-16. Similarly, the Court in Serbian Church held that the First Amendment commits authority to resolve disciplinary proceedings to churches:

> [T]he Illinois Supreme Court has unconstitutionally undertaken the resolution of quintessentially religious controversies whose resolution the First Amendment commits exclusively to the highest ecclesiastical tribunals of this hierarchical church.

426 U.S. at 717, 720 (emphasis added); accord Douglas Laycock and Susan E. Waelbroeck, Academic Freedom and The Free Exercise of Religion, 66 Tex. L. Rev. 1455, 1461

(1988) ("The free exercise clause guarantees not just the bare freedom to conduct religious activities, but also the freedom to conduct those activities autonomously: churches may define their own doctrines, select their own leaders, run their own institutions, and resolve their own disputes.") (footnotes omitted).

15. Both Dr. McEnroy and the defendants rely on the following passage of the New Jersey Supreme Court's opinion in Welter v. Seton Hall University, 608 A.2d 206 (N.J. 1992), concerning (a) when a church may be held to have waived its First Amendment right to discipline a ministerial employee and (b) how a civil court should determine whether there has been such a waiver:

> [R]eligious institutions are free to bargain away the right to unimpeded discretion in deciding which persons are most qualified to minister the religion or to train those who will eventually minister the faith. A cursory judicial review of the employment manual or contract to determine whether the ministerially-functioning employee and the religious institution expressly included such a waiver will not transgress the First Amendment.

Id. at 214 (emphasis added). Having conducted a "cursory review" of Dr. McEnroy's contract in this case, the Court has determined that it does not contain an "express waiver" of the Church's First Amendment right to discipline its ministerial employee, Dr. McEnroy, free from civil court interference. To the contrary, the Governance Statement expressly reserved

Archabbot Timothy's jurisdiction to act as specified by Church canon law.

16. Dr. McEnroy counters that the Court can decide this case solely on the basis of "secular" provisions in the Faculty Handbook. But the Court is not free to focus on those provisions to the exclusion of the other, religious provisions that the parties also included in their contract. And there is no dispute that it was pursuant to those other, religious provisions – rather than pursuant to the secular provisions that Dr. McEnroy relies on – that Archabbot Timothy took the action on which Dr. McEnroy bases her claims. To address those claims, therefore, the Court would inevitably be required to decide religious issues. This the Court cannot do.

17. Moreover, the incidents of litigation–depositions, subpoenas, document discovery and the like–would disrupt Saint Meinrad in a way that the United States Constitution does not permit. "An excessive entanglement may occur where there is a sufficiently intrusive investigation by a government entity into a church's employment of its clergy." EEOC v. Catholic University, 83 F.3d 455, 466 (D.C. Cir. 1996). "[C]ivil court review of ecclesiastical decisions of church tribunals, particularly those pertaining to the hiring or firing of clergy, are in themselves an 'extensive inquiry' into religious law and practice, and hence forbidden by the First Amendment." Young v. Northern Ill. Conf. Of United Methodist Church, 21 F.3d 184, 187 (7th Cir.), cert. denied., 513 U.S. 929 (1994) (emphasis in original). Thus, the First Amendment prohibits discovery and trial probing whether Dr. McEnroy's actions

constituted "dissent" from the Pope's teaching and required her removal under Church canon law.

18. For these same reasons, the Court also lacks jurisdiction over Dr. McEnroy's tortious interference and good-faith-and-fair-dealing claims. Those claims as well would require the Court, in violation of the First Amendment, to resolve religious issues regarding the Church's motivation for refusing to allow Dr. McEnroy to continue to train priests. To establish her tortious interference claim, Dr. McEnroy would have to prove that, by instructing Father Eugene to remove her, Archabbot Timothy acted in "the absence of justification." Winkler v. V.G. Reed & Sons, Inc., 638 N.E.2d 1228, 1235 (Ind. 1994). The "overriding question" in that connection "is whether the defendant[']s conduct has been fair and reasonable under the circumstances." Id. At 1235. To determine whether Archabbot Timothy's actions were fair and reasonable, this Court would have to determine among other things (1) the relationship between Archabbot Timothy, Saint Meinrad and Dr. McEnroy; (2) the interests that Archabbot Timothy sought to advance by removing Dr. McEnroy; and (3) Archabbot Timothy's motive for instructing Father Eugene to remove Dr. McEnroy. Id. This Court cannot delve into such pervasively religious matters. Singleton v. Christ The Servant Evangelical Lutheran Church, 541 N.W.2d 606, 614 (Minn. Ct. App.), cert. denied, 117 S.Ct. 184, 136 L.Ed.2d 123 (1996) (no jurisdiction to decide claim that bishop tortiously interfered with pastor's relationship with his congregation because First Amendment prohibited Court from probing whether bishop's actions were "justified" under church doctrine and law). Indeed, probing the relationship between the Archabbot of a Roman Catholic Archabbey and a seminary that is a work of the Archabbey

would itself be an excessive entanglement with religion. Dr. McEnroy's good-faith-and-fair-dealing claim would require the Court to undertake the same inquiry into Archabbot Timothy's motivation for removing her under church law. Knuth v. Lutheran Church Missouri Synod, 643 F.Supp. 444, 448 (D.Kan. 1986) (court lacked subject matter jurisdiction over good-faith-and-fair-dealing claim regarding church hierarchy's alleged misapplication of church rules specifying that plaintiff was not eligible for ministerial employment). In fact, although she insists that questions of religious justification and motive are irrelevant, Dr. McEnroy nevertheless argues that Archabbot Timothy's action to remove her from the faculty "was taken without justification, and with malice toward Dr. McEnroy" (McEnroy Brief at 19 (emphasis added)), and she seeks on that basis to recover punitive damages. If the Court were to entertain Dr. McEnroy's claims, it would not be able to avoid these religious issues any more than Dr. McEnroy has been able to avoid them in her affidavit and brief.

19. The Court appreciates the fact that Dr. McEnroy feels she has been wronged. But her dispute is, at bottom, one over church doctrine. This Court cannot resolve it for her.

It is therefore ORDERED, ADJUDGED, AND DECREED that this action is dismissed for lack of subject matter jurisdiction.

Date: 2/23/98

/s/ Wayne Roell
Judge, Spencer Circuit Court

APPENDIX D

Dr. M. Carmel McEnroy, RSM
HRC #70, Box 199A
Bristow, IN 47515

Dear Sister Carmel:

I am pleased to offer you this contract for Continuing Appointment as a faculty member of Saint Meinrad School of Theology. Your rank will be that of Associate Professor of Systematic Theology. The salary for 1992-93 will be $29, 281.00, payable bi-weekly on a nine month schedule or a twelve month schedule, at your convenience. This is an increase of 3.5% over last year. It is understood that payment for these services is not subject to withholding or reporting for any income, social security, or other taxes. All such reporting to the extent required will be your responsibility. Salaries are reviewed annually. Maximum teaching assignment is fifteen hours per annum.

Saint Meinrad School of Theology is a single-purpose institution concerned with priestly formation. It is understood that you will observe and enforce the rules and regulations according to the terms specified in the Faculty Constitution and promulgated by the Administrative Officers of the School of Theology.

The statements on academic freedom and responsibility, on appointment and dismissal contained in the Faculty Constitution are among the terms of appointment. The same applies to the conditions of teaching service and fringe benefits.

If the terms of this contract are agreeable to you, please sign the original and all of the copies and return them to me. I will then sign and seal them and return a copy to you.

Sincerely yours in Christ,

/s/ Rev. Eugene Hensell, OSB
President-Rector

/s/ M. Carmel McEnroy ✓ Nine month schedule.
(Dr. M. Carmel McEnroy, RSM)

May 19, 1992 ____ Twelve month schedule.
(Date)

APPENDIX E

CONSTITUTION OF THE FACULTY
SAINT MEINRAD SCHOOL OF THEOLOGY

1.000 PROLOGUE

1.100 FACULTY RESPONSIBILITY IN GOVERNANCE

The faculty of the School of Theology is one part of the fourfold division of the School: Board of Trustees, Administration, Faculty and Students. The role of the faculty in governance is complex and sometimes obscure. This is an attempt to spell out that role under the headings of primary and advisory responsibilities.

1.200 PRIMARY RESPONSIBILITIES

1.201 The faculty has primary responsibility for such fundamental areas as curriculum, subject matter and methods of instructions, research, faculty status, and those aspects of student life which relate to the educational process. This responsibility is normally exercised through the standing committees of the faculty, subject to final review and approval by the entire faculty.

The faculty recognizes that the ultimate legal responsibilities in these areas lies with the Board of

Trustees and its designated representative, the President-Rector. The faculty as a body has access to the Board of Trustees through the President-Rector. It is the ordinary expectation of the faculty to be informed and offered opportunity to respond to decisions of the Board of Trustees contrary to policies of faculty in these areas.

1.202 The faculty has the primary responsibility for setting the requirements for degrees offered, determines when the requirements have been met, and recommends candidates to the President-Rector and the Board of Trustees to receive the degrees thus achieved.

1.203 Recommendations concerning faculty status and related matters are a primary responsibility of the faculty: this area includes appointments, reappointments, decisions not to reappoint, promotions, and dismissal. The primary responsibility of the faculty to advise in such matters is based upon the fact that its judgment is central to general educational policy.

1.204 The faculty has the primary responsibility for determining the priorities for the allocation of its time and resources.

1.300 ADVISORY RESPONSIBILITIES

1.301 The faculty should actively participate in the determining of salary scales and increases in salary.

1.302 In those areas of student life which do not directly relate to educational policy, the faculty has only an advisory role.

1.303 Spiritual Formation Program - Upon request of the Spiritual Director, the faculty does participate in and support the programs of spiritual formation. However, the primary responsibility lies with the Spiritual Director. Individual faculty members are asked to share in this responsibility.

1.304 Student Life Program - The faculty has the same role in this area as it does in the Spiritual Formation Program.

1.305 Evaluation Process - The faculty acts as a committee of the whole to advise the President-Rector on the individual student's development. The advice of the faculty should be given the gravest attention.

1.306 Promotion to Orders - The faculty advises the President-Rector on the student's promotion to Orders.

2.000 FACULTY ADMINISTRATION

2.100 STANDING COMMITTEES

2.101 A standing committee should be constituted or abolished by a vote of a simple majority of the voting members of the faculty.

2.102 The standing committees do not preclude the possibility of ad hoc committees which would be charged with a specific task for a specified length of time. A standing committee may request that the faculty temporarily place one of the items of their responsibility in an ad hoc committee.

2.103 Standing committees can be requested by the Academic Dean to report to the faculty at large and will be required to submit a written report of their work annually to the President-Rector and Academic Dean.

2.104 Standing committees will make recommendations to the faculty on matters of policy pertaining to their functions. Policy decisions and procedures having been established by the faculty, the committees need not refer specific actions to the entire faculty.

2.105 Appointments will be made to the standing committees for a term of two years. Ex-officio members will serve continually. A vacancy in any ex-officio position will be filled by the person temporarily charged with the responsibility of the office. (That is, if the Office of Academic Dean is vacant, the ex-officio position of the Academic Dean would be filled by the Acting Academic Dean.)

The chairpersons of the sections are to be elected for two year terms in alternate years, Biblical and Historical Studies in odd-numbered years, Systemic Studies and Pastoral Studies in even-numbered years.

2.106 The Academic Dean, as part of the agenda for the second faculty meeting, will prepare a list of nominations for the vacant faculty positions on the other standing committees. Upon publication of the list, faculty members will have the option of placing additional names on the list of nominations by submitting such names in writing to the Academic Dean prior to the faculty meeting. The nominations will be confirmed by a simple majority of the faculty.

The TSU President has the responsibility of submitting to the Academic Dean the names of the student representatives to the standing committees as soon as possible after the student elections have been completed.

2.107 The Academic Dean will call the first meeting of the standing committees at which time the committee will elect its chairperson.

2.108 Duties of the Committee Chairpersons:

(1) To call and preside at committee meetings
(2) To prepare the agenda
(3) To report to the faculty upon its request
(4) To submit a written report annually to the President-Rector and the Academic Dean.

2.109 The President-Rector may attend any meeting of a standing committee or communicate with that committee.

2.110 Standing Committees Now In Operation

The President-Rector, Vice-Rector, Academic Dean, Spiritual Director, and any faculty member in the first year of his/her appointment are not eligible for election, although they may vote as members of the faculty.

2.111 Personnel

Membership:

- Academic Dean, ex-officio, without vote
- Four (4) faculty members (one of whom must not be on Continuous Appointment), two being elected annually. At the first faculty meeting, after the election of the faculty moderator, elections for Personnel Committee will take place. Only faculty members who have full-time status are eligible. They may not be elected to successive terms.
- Two (2) students (II and III Theology)
- One (1) faculty member elected as alternate for a one year term at the beginning of each year. The alternate will serve at the discretion of the committee.

Function

- To evaluate all faculty as required in the Faculty Constitution, with appropriate recommendations to the President-Rector. To evaluate faculty members who have received Continuous Appointment, within every five (5) year period after such appointment, as an encouragement to sustained competence. To appoint, supervise, and receive recommendations from Search Committees.

2.112 Academic

Membership:

- Academic Dean, ex-officio
- Chairpersons of each Division
- Two (2) student representatives (I and IV Theology)

Function:

- To review educational programs and to recommend to the faculty changes as may be appropriate. To advise the President-Rector and Academic Dean as to personnel needs. To gather and publicize material relating to grants, fellowships, and research projects. To review and recommend Sabbatical Leave

proposals. To review academic policies as necessary.

2.113 Programs and Lectures

Membership:

- Associate Academic Dean, ex-officio
- Two (2) faculty members
- Two (2) students

Function:

- To secure lectures for the annual endowed lectureship. To submit to the Academic Dean the yearly request for financial support. To organize periodic lectures and discussions between students and faculty. To organize special programs as the need arises. To coordinate and consult with the Tri-Communities Cultural Program Committee.

2.114 Collateral Programs Committee

Membership:

- Director of Summer School, ex-officio
- Director of Continuing Education, ex-officio
- Three (3) faculty members

- One (1) student representative

Function:

- To assist in the development of the Collateral Programs as designated by the faculty.
- To evaluate the curriculum of these programs.
- To recommend personnel for the Collateral Programs to the Associate Academic Dean, Academic Dean, and President-Rector.
- To undertake periodic evaluations of the academic and financial feasibility of the Collateral Programs.
- To advise in consultation with the Academic Dean and the President-Rector on the appointment of the Associate Academic Dean for Collateral Programs.
- The Collateral Programs will include Summer School, Continuing Education, MACC, the Martin Center, and the I.U. Program.

Revised March 9, 1990

2.115 Library

Membership:

- Librarian, ex-officio

- Two (2) faculty members
- One (1) student

Function:

- To receive annual reports from the Librarian on acquisitions and facilities of the library. To assist the Librarian in planning for the acquisition of books, periodicals and to plan for an orderly expansion of library facilities. To stimulate faculty and students to make maximum use of library materials.

2.220 FACULTY MODERATOR

2.201 The term of office for the Faculty Moderator shall be for one year running from the beginning of the academic year until the election of a successor. The election of the Moderator will take place at the first faculty meeting of the academic year. A simple majority is needed for election. No one may serve more than two (2) consecutive terms.

2.202 Any full-time faculty member shall be eligible for election. The President-Rector, Vice-Rector, Academic Dean, Spiritual Director, and Dean of Students and any faculty member in the first year of his/her appointment are not eligible for election, although they may vote as members of the faculty. Assistant and Associate administrators, if full-time faculty members, are eligible for election.

2.203 Duties:

(1) To serve as an ex-officio member of the Executive Board..

(2) To act as the faculty liaison to the administration, and to the students.

(3) To provide opportunities for conversation among the faculty on issues of concern and interest.

(4) To help the Academic Dean prepare at the beginning of each semester a list of those considered voting members of the faculty.

(5) To assist the Academic Dean in preparing a list of nominations of faculty members to fill vacancies on the Standing Committees and to nominate substitutes for committee members who are on leave.

(6) To subject agenda items for faculty meetings to the Academic Dean.

(7) To assist the Academic Dean in updating the faculty handbook.

(8) To provide an annual report to the faculty.

2.300 RULES GOVERNING FACULTY MEETINGS

2.301 The Academic Dean schedules regular faculty meetings, usually once a month.

2.302 A quorum of the faculty should consist of one-half the number of designated full-time members of the faculty.

2.303 With respect to matters not covered by these rules, the most recent edition of Robert's Rules of Order should govern.

2.304 The following may be invited to faculty meetings with the privilege of entering discussion, but without voting rights:

(1) The Business Manager and Director of Budget

(3) The Director of Public Relations and Development

(3) Visiting professors or lecturers who teach on a part-time basis

(3) Any other whom the faculty wishes to invite

2.305 The Academic Dean's secretary shall take the minutes of the faculty meeting. Copies of the minutes will be distributed to faculty members for approval at the next faculty meeting.

2.400 FACULTY ELECTIONS

2.401 The following elections are to take place at the first faculty meeting of the academic year:

(1) Faculty Moderator
(2) Vacancies to the Personnel Committee
(3) Vacancies to the Academic Committee. These vacancies are filled by the election of division chairperson(s) by the appropriate division(s). (See 2.105 and 2.407)

Vacancies to the rest of the Standing Committees shall be filled at the second faculty meeting. However, election of substitutes for faculty committee members on leave may take place when necessary.

2.402 Those eligible to vote at faculty meetings:

(1) All faculty members designated as "full-time" or "part-time."
(2) The President-Rector, the Provost Vice-Rector, the Academic Dean, the Associate Academic Deans, the Librarian, and the Spiritual Director.

2.403 At the beginning of each semester, the Academic Dean will prepare a list of those considered "Voting Members of the Faculty."

2.404 All elections shall be decided by a simple majority of those voting.

2.405 Voting shall normally be by a show of hands. Any voting member of the faculty may, as a point of order, request a secret ballot before the call to voting by the Academic Dean. Voting by secret ballot may not be delayed or postponed until a later meeting.

2.406 Only those present at the meeting may vote.

2.407 The Faculty Moderator and faculty representatives to the Personnel Committee shall normally be elected by secret ballot. Each division elects its own chairperson. (See 2.105)

3.000 PROFESSIONAL STATUS OF FACULTY

The faculty positions of the Saint Meinrad School of Theology are presently being filled by the members of the Saint Meinrad Archabbey and by personnel in no way affiliated with the aforesaid Monastic Community. The primary responsibility of this faculty is to implement the academic program of the School of Theology which seeks to encourage academic excellence, intellectual integrity and the personal appropriation of the insights of theology.

The very "pluralistic" nature of the faculty personnel has contributed in the past and hopefully will continue in the future to the general excellence of the academic program as well as to the achievement of the overall goals of the School. In fact, the nature and purpose of the School will best be served by maintaining a

healthy ratio or blend of just such "pluralism" in its faculty personnel.

In addition, there must be a reasonable provision both for faculty stability and security as well as provision for the influx of new personnel. These needs and concerns will be served best by a wise and judicious use of both "open" appointments, leading to Continuing Appointment, and "terminal" appointments. The latter can be made for any specified number of years but are not subject for renewal.

One of the functions of the Academic Committee is to advise the President-Rector and the Academic Dean yearly on present and future personnel needs. Making this information available to the appropriate authority in the Monastic Community and being informed in return of possible future faculty candidates from this community should help to insure a healthy blend of the "pluralism" referred to above.

3.100 STANDARD PROCEDURE FOR ALL APPOINTMENTS AND PROMOTIONS

3.101 Faculty appointments are made by the President-Rector acting on the recommendation of and in consultation with the Academic Dean and the Faculty Personnel Committee.

3.102 The chief guidelines for all faculty appointments and promotions are those indicated in NCCB Program of Priestly Formation (1981).

The qualities necessary for faculty members have been stated generically by the Second Vatican Council: pastoral experience, and adequate spiritual, academic and professional preparation (Decree on the Training of Priests, n.5). In choosing faculty for the Seminary, the appropriate authority should consider among other factors, the ability to establish effective rapport with students, willingness to engage in this form of the apostolate, and genuine stability with regard to temperament, psychological health and maturity. As a rule, priest faculty members should have some years of appropriate parochial or pastoral ministry. Over and above academic preparation and pastoral experience, each faculty members should also undergo some specific training in pedagogy and in the broader area of formation in order to more easily and more adequately enter into the spiritual formation and field education program. Members of the formational faculty should have received some specific preparation for this work. Specific preparation should also be given those who are to exercise administrative responsibilities. The training of faculty is further specified by Sapientia Christiana." (241)

3.103 Within these guidelines consideration should be given to these following criteria:

(1) the needs of the School of Theology and the departments thereof
(2) teaching ability
(3) evidence of scholarly interests and pursuits which may but need not take the form of publication
(4) competence in informal counseling
(5) commitment to the single purpose of the institution

3.104 In the matter of faculty promotions and dismissals, the 1940 AAUP Statement of Principles is accepted and followed by the School of Theology.

3.105 Should there be an extraordinary case when the standard procedures for appointment cannot be followed, the President-Rector shall seek the written consent of the Personnel Committee to depart from the procedure.

3.200 DISMISSAL AND NON-REAPPOINTMENT

3.201 Dismissal and non-reappointment are affected according to the norms of the AAUP:

"The Standards for Notice"

"Notice of non-reappointment, or of intention not to recommend reappointment, will be given in writing in accordance with the following standards:

Not later than March 1 of the first academic year of service, if the appointment expires at the end of that year; or, if a one year appointment terminates during an academic year, at least three months in advance of its termination.

Not later than December 15 of the second academic year of service, if the appointment expires at the end of that year; or, if an initial two year appointment terminates during an academic year, at least six months in advance of its termination.

At least twelve months before the expiration of an appointment after two or more years in the institution.

At least three years before the expiration of a seven year appointment."

3.202 If the contract of a faculty member is to be terminated before its expiration date for "grave cause", the Personnel Committee will advise the President-Rector as to whether or not a "grave cause" exists according to the 1940 AAUP Statement of Principles.

3.203 According to the Norms of the Sacred Congregation for the Doctrine of the Faith in "Faculties, institutes, schools, etc. of ecclesiastical or religious science... no teaching assignments may be entrusted to married priests, any such assignments must be resigned before a dispensation is granted."

3.204 Excommunication is grounds for automatic dismissal. Censure and/or interdict shall be cause for reconsideration of contract. Likewise, divorce or dispensation from religious vows shall be cause for reconsideration of contract.

3.300 STANDARD PROCEDURE FOR OBTAINING CONTINUING APPOINTMENT

3.301 This procedure is operative for all faculty members who begin their teaching careers in the Saint Meinrad School of Theology and who devote full-time to the School although they may not be teaching full-time because of administrative or other duties in the School. (The case of transfer faculty members with previous teaching experience at a comparable level will be considered separately. Terminal appointments do not qualify.)

3.302 The first appointment will be for one year. At least three months prior to its termination the faculty member will receive written notice of renewal or dismissal.

3.303 The second appointment will be for three years. At leave twelve months prior to its termination the faculty member will receive written notice of renewal or dismissal.

3.304 The third appointment will be for seven years. In the fourth year of this seven year appointment (eighth year of teaching) the faculty member will receive written

notice either of a new seven year appointment which will be effective the following year or notice of termination in three years.

3.305 In the fourth year of this new seven year appointment (twelfth year of teaching) the faculty member will receive written notice of Continuing Appointment or termination in three years.

3.306 A faculty member who has reached the age of fifty-five and has taught a minimum of five years in the Saint Meinrad School of Theology is eligible to request Continuing Appointment.

3.307 Promotions in rank and admission to Continuing Appointment are made by the President-Rector upon the recommendation of the Personnel Committee. The Board of Trustees gives final approval of Continuing Appointment.

3.308 Continuing Appointment implies full-time employment in the School of Theology. It ends with the close of the scholastic year in which the faculty member retires.

3.309 NOTE: Continuing Appointment implies that the faculty member with Continuing Appointment may be dismissed only for grave cause as spelled out in Section 3.202, 3.203, 3.204 of the Constitution, or on account of a grave financial emergency, or because that teaching post no longer serves the needs of the Institution and will be discontinued by a vote of the faculty.

3.400 TRANSFER FACULTY MEMBERS AND CONTINUING APPOINTMENT

3.401 The following procedures are operative for all full-time members of the faculty who have already taught before coming to Saint Meinrad School of Theology.

3.402 If a prospective faculty member has already received tenure at:

(1) a graduate institution, the Board of Trustees may grant Continuing Appointment on the inception of teaching at Saint Meinrad School of Theology upon the recommendation of the Personnel Committee, Academic Dean, and President-Rector.

(2) an undergraduate institution, the Board of Trustees may grant Continuing Appointment upon inception of teaching at Saint Meinrad School of Theology upon recommendation of Personnel Committee, Academic Dean and President-Rector, only if the prospective faculty member has completed a significant number of years of service, has clearly demonstrated excellence in teaching, has given evidence of substantial scholarship, and has done some graduate teaching.

3.403 If a prospective faculty member has already taught at a graduate institution, these years of service may be used to determine the person's status at Saint Meinrad School of Theology and the length of appointments.

3.404 If a prospective faculty member has previously taught at an undergraduate institution, these years of service may be used to determine the person's status at Saint Meinrad School of Theology.

3.405 The Personnel Committee will determine the years of previous service to be recognized towards the years of service needed for Continuing Appointment.

3.500 STANDARD PROCEDURE FOR PERIODIC EVALUATION OF FACULTY MEMBERS

3.501 The evaluation procedure and criteria used to recommend renewal of appointment, promotion in rank or dismissal will be the same for all faculty members.

3.502 The Personnel Committee will evaluate the faculty member up for reappointment and review his/her academic and professional competence by applying the criteria given in Sections 3.102 and 3.103 of the Constitution. Data gathered from student evaluation of courses taught by that faculty member as well as comments from other faculty members when canvassed individually should be examined carefully and critically.

3.503 The Committee will submit a written report of their evaluation and recommendation for renewal, promotion or dismissal to the President-Rector, the Academic Dean and the faculty member being evaluated.

3.504 The faculty member will have the right to request clarification from the Committee. If s/he disagrees with their written report or any part thereof, s/he may submit his/her own views in writing and send copies to the Committee, the President-Rector and the Academic Dean.

3.505 If the Committee wishes to respond to this, a written reply will be sent to the President-Rector, the Academic Dean and the faculty member being evaluated. This terminates the work of the Committee.

3.506 As a normal policy faculty members will be evaluated in the first, third, eighth and twelfth year of teaching in the Saint Meinrad School of Theology, or in the year they must be notified either of renewal or termination of appointment should the above not coincide.

3.507 Faculty members who devote less than full time to the School of Theology will be evaluated in the first year of teaching and triennially thereafter.

3.600 FACULTY STATUS

The following are the various statuses by which those who teach in the School of Theology are recognized and distinguished. Members of the faculty are divided into three groups: full-time, part-time, visiting. These designations and criteria are applicable to appointments beginning on or after September 1,

1983. Rank and promotions in rank are granted by the President-Rector upon recommendation of the Academic Dean and Personnel Committee.

3.610 Full-Time Status

Those members of the faculty who are designated full-time comprise the regular faculty. Full time is normally understood to involve teaching two (2) courses each semester, plus one (1) course during the January Interterm, or by special contract, one (1) course during the summer school.

A faculty member who teaches in both schools but whose primary focus is in the School of Theology shall be considered to have full-time status if the combined teaching involves teaching 4-5 courses during the regular academic year.

Full-time faculty members who assume major administrative positions in the School of Theology retain full-time status and rank and follow the regular procedures for evaluation, renewal and promotion. They will follow administrative procedures regarding sabbaticals.

Situations not otherwise covered will be referred to the Personnel Committee.

There are four ranks:

- Professor
- Associate Professor

- Assistant Professor
- Instructor

3.611 Professor:

(1) Doctorate (or equivalent) is required.

(2) **Continuing Appointment** and at least seven years of graduate teaching experience.

(3) Evidence of distinguished teaching in graduate professional education.

(4) Evidence of consistent, significant scholarship and publication of high quality.

3.612 Associate Professor:

(1) Doctorate (or equivalent) is required.

(2) At least four years of graduate teaching experience.

(3) Evidence of competent teaching in graduate professional education.

(4) Evidence of scholarly accomplishment.

3.613 Assistant Professor:

(1) Doctorate (or equivalent) is required.

(2) Evidence of potential distinction in graduate professional teaching.

(3) Evidence of ability to engage in scholarly work.

3.614 Instructor:

(1) Master's degree (other than M.Div.) and advanced graduate work are normally required.

(2) General indications of teaching and scholarly ability.

3.615 Procedures:

(1) Members of the faculty who are Assistant Professors should normally apply for and receive promotion to Associate Professor no later than their seventh year of service.

(2) Members of the faculty may not apply for the rank of Professor until they have been granted Continuing Appointment.

3.620 Part-Time Status:

Part-time is normally understood to involve teaching no more than a total of three (3) courses during the regular academic year.

3.621 Adjunct Status:

(1) "Adjunct" refers to members of the faculty who teach part-time and hold no administrative office in the School of Theology. Part-time is normally understood to involve teaching no more than a total of three (3) courses during the regular academic year.

(2) There are four ranks: Adjunct Professor, Adjunct Associate Professor, Adjunct Assistant Professor, and Adjunct Instructor.

(3) Initial rank is determined by graduate school rank held elsewhere or by application of the criteria for full-time faculty. Promotion in rank is possible on the same basis as for full-time faculty.

(4) In special cases the rank of Adjunct Instructor may be granted even if the person has not engaged in advanced graduate work or does not have an academic master's degree or its equivalent.

3.623 Procedures for Adjunct Faculty:

(1) Faculty with adjunct status are appointed by the President-Rector upon recommendation from the Academic Dean. The Personnel and Academic Committees are to be informed by the Academic Dean of any such appointments.

Adjunct faculty will be evaluated on a regular basis by the Academic Dean and the appropriate Division.

3.630 Visiting Status:

Those members of the faculty who are invited to teach in the School of Theology for a period not to exceed two (2) years are referred to as visiting members of the faculty. They may be part-time or full-time.

3.631 Visiting members of the faculty are divided into Visiting Professor, Visiting Associate Professor, Visiting Assistant Professor, and Visiting Instructor.

3.632 Rank is determined by previous graduate rank.

3.633 Procedures for Visiting Faculty:

(1) Visiting faculty who are full-time are appointed by the President-Rector upon recommendation from the Academic Dean and the Personnel Committee. A person may not hold the status of visiting member of the

faculty on a full-time basis for more than two years.

(2) Visiting faculty who are part-time are appointed by the President-Rector upon recommendation from the Academic Dean. The Personnel Committee is to be informed by the Academic Dean of any such appointments. A person may not hold the status of visiting members of the faculty on a part-time basis for more than two years.

(3) Service as a visiting member of the faculty may apply, at the discretion of the Personnel Committee, towards the years needed for Continuing Appointment.

3.700 ACADEMIC FREEDOM

3.701 Every faculty members enjoys academic freedom according to the provisions of paragraphs (a, (b), and (c) in the 1940 AAUP Statement on Academic Freedom. This is guaranteed by the "Code of Bylaws of Saint Meinrad School of Theology Corporation," Article 8, Section 8.04. A copy of the 1940 AAUP statement is appended to this Faculty Constitution (see Appendix A).

3.702 Because of the special character of Saint Meinrad School of Theology as an institution training men for the Roman Catholic Priesthood and the nature of theological investigation carried on by the members of

the faculty, the question of religious freedom as an aspect of academic freedom is of special important. The 1940 AAUP Statement says: "Limitations of academic freedom because of religious or other aims of the institution should be clearly stated in writing at the time of appointment." Article 8, Section 8.04 of the Bylaws of Saint Meinrad School of Theology Corporation states: "The freedom of teacher and student is full, yet understood in the context of the aims and purposes of Saint Meinrad School of Theology, particularly in the light of the Constitutions, Decrees, and Declarations of the Council Vatican II." Paragraphs 250, 251, and 252 of the NCCB Program of Priestly Formation (1981) are relevant to this issue:

250. "In the faculty's academic work, appropriate freedom should be granted them as professionals. This freedom must be understood in the context of the purpose of the Seminary and balanced by the rights of the students, the institution, and the concerns of the Church."

251. "In the theological exposition and investigation of the data of revelation and "the principles of the moral orders which spring from human nature itself" (Declaration on Religious Liberty, n. 14), professors, ever mindful of the varying degree of theological certainty, should carefully distinguish between their own insights, developments, and speculations on the one hand and certain

Catholic doctrine on the other. A fundamental task of the teaching faculty is to set forth Catholic doctrine as formulated by the authoritative teaching of the Church (Dogmatic Constitution on the Church, n. 25)."

252. "Despite all good will, there may be conflicts arising from statements or reported teaching of the faculty. To meet this situation in cases which cannot be handled by a conference of clarification, some clearly defined procedures should be established - such as a mediation board composed of members acceptable to the parties in conflict whereby an accused faculty member can receive a full and fair hearing."

Interpretations:

(1) The faculty of the School of Theology acknowledges the fundamental responsibility of the faculty to explicate Catholic doctrine as the living tradition of the Church.

(2) Given the pluralistic theological situation today, the faculty of the School of Theology affirms the right of each faculty member to experiment creatively and responsibly within those theological traditions.

(3) The Academic Committee will act as a committee of peers if a Roman Catholic faculty member should be accused of teaching material

contrary to the doctrines of the Catholic Church. This committee shall then make a recommendation to the President-Rector.

(4) A faculty member has the right to appeal the recommendation of the Academic Committee to the Board of Trustees through the President-Rector of the School of Theology.

3.703 Academic Freedom for Faculty Members Who Are Not members of the Roman Catholic Church

(1) A faculty member who is not a member of the Roman Catholic Church will enjoy all of the privileges of academic freedom granted to other faculty members. In addition to these s/he will have full freedom of conscience as described in the Declaration on Religious Freedom (Dignitatis Humanae) of the Second Vatican Council. At no time shall conversion to Roman Catholicism be a condition for reappointment or promotion, nor shall failure to adhere to any particular doctrine of the Roman Catholic Church be grounds for dismissal.

(2) A cleric or minister of another Church will be expected to remain in good standing with his/her proper judicatory. Any disciplinary action taken by a judicatory against such a faculty member will not affect his/her status on this faculty except when this action is based on

matters of moral character. In such a case, the faculty will make an independent investigation.

(3) A faculty member who is not a member of the Roman Catholic Church will be expected to:

(a) Respect the conscience and faith of Roman Catholic faculty and students.

(b) Refrain from proselytism.

(c) Limit his/her public disagreement with Roman Catholic doctrine and discipline to the academic forum and occasions of ecumenical discussion.

(d) Abide by the regulations of the local Ordinary concerning liturgical practice and ecumenical activity.

(e) Maintain a moral character and personal faith commitment which are consonant with the goals of the Saint Meinrad School of Theology.

(f) Participate in the liturgical and para-liturgical activities of the School of Theology insofar as this manual requires it and insofar as the regulations of the Roman Catholic Church and his/her own Church permit it. No faculty member who is not a communicant of the Roman Catholic

Church will be required to attend or participate in any way in a rite or ceremony which will violate his/her conscience.

(4) A faculty member who is not a member of the Roman Catholic Church will not in any way encourage or contribute to a student's violation of the Code of Canon Law, the regulations of the Diocese, or the Rule or Customary of his/her religious community.

3.800 OUTSIDE EMPLOYMENT

During the academic year, a full-time member of the faculty shall not be employed by agencies other than the School of Theology, except with the written approval of the President-Rector. Such approval must be renewed annually. (Cf. NCCB Program of Priestly Formation (1981), par. 245.)

3.900 CONTRACTUAL BENEFITS

3.901 Membership in Learned Societies

Each faculty member is encouraged to hold membership in at least one professional society or organization. The School of Theology will pay membership dues for faculty members to the extent that the budget permits.

3.902 Attendance at Professional Meetings

Within budgetary limitations it is the School of Theology's policy to pay the travel and per diem expenses of faculty members participating in professional meetings. Arrangements for the reimbursement for travel expenses are to be made through the Office of the Academic Dean.

3.903 Special Benefits for Faculty Who Are Not Members of Saint Meinrad Archabbey

(1) The School of Theology will pay the expense of moving to Saint Meinrad or surrounding area for incoming faculty members.

(2) Faculty members are covered by the Social Security provisions of the Federal Insurance Contributions Act.

(3) The School of Theology offers health and hospitalization insurance and major medical and dental insurance programs to all full-time faculty members and their dependents. This plan, called "Employee Benefits Plan," is self-funded and self-administered by Saint Meinrad Archabbey (Cf. Employee Handbook, "Health Insurance").

(4) The School of Theology makes available a life insurance policy to all full-time faculty

members and their dependents (Cf. Employee Handbook, "Life Insurance").

(5) All Full-time faculty members are given the opportunity to participate in short-term and long-term disability insurance programs (Cf. Employee Handbook, "Short-Term Disability"; "Long-Term Disability").

(6) The School of Theology offers full-time faculty members and administrative officers participation in the Lincoln National Pension Company, T.I.A.A. - C.R.E.F. or some suitable parallel program (determined by administrative decision of Saint Meinrad School of Theology) subject to the requirements of RETIREMENT PLAN RESOLUTION. The RETIREMENT PLAN RESOLUTION may be reviewed at the Human Resources Department.

(7) The employee assistance program provides for confidential counseling services to all full-time faculty members and their dependents (Cf. Employee Handbook, "Employee Assistance Program").

(8) Saint Meinrad Archabbey is affiliated with the Evansville Teachers Federal Credit Union. For further information about their services, contact the Credit Union at 800-992-5881 or contact the Human Resources Department.

(9) Further information concerning benefits is available from the Human Resources Department.

4.000 PROFESSIONAL RESPONSIBILITIES OF THE FACULTY

4.100 TEACHING LOAD

4.101 A full-time status for a faculty member shall normally consist of teaching five (5) courses during the regular academic year.

4.102 The five (5) courses will normally be divided into two courses each semester plus one course during the January Interterm, or by special contract, during the Summer Session.

4.200 CLASS ATTENDANCE

4.201 Faculty members are expected to meet their classes at the assigned times. If they are unable to meet their classes, they should notify the Academic Dean.

4.202 Faculty members are expected to dress in accord with their professional status.

4.300 STUDENT COUNSELING

4.301 Faculty members are requested to hold regular office hours during terms in which they teach and to make

their hours known by posting them on their office doors.

4.302 The advising of students concerning course selection and schedules is handled through the Office of the Academic Dean. Counseling a student with a problem in a particular course is the province of the faculty member in that course.

4.303 The Spiritual Director may ask individual faculty members to take part in the leading of small group discussions as part of the Spiritual Formation Program.

4.400 RESEARCH AND TEACHING

4.401 Faculty members are encouraged to share the fruits of their research with their colleagues either at regular faculty meetings or at a special meeting arranged by the faculty moderator to facilitate such conversations (See 2.203 (3))

4.402 A faculty member's first professional responsibility is to his/her teaching duties in the School of Theology.

4.403 When a faculty member is offered a speaking engagement from the outside which involves absence from his teaching duties, the responsibility of such absence should be cleared with the Academic Dean before the invitation is accepted.

4.404 Faculty members are expected to take active part in TEAM-A professional activities and to have active membership in professional societies.

4.500 PARTICIPATION IN FACULTY ACTIVITIES

4.501 Each faculty member is expected to attend all faculty meetings. If necessity prevents one's attendance, s/he should notify the Academic Dean prior to the scheduled meeting or as soon as possible afterwards.

4.502 Attendance at student evaluation sessions is required as specified in the evaluation procedure.

4.503 Each faculty member should consider it his/her responsibility to offer his/her services for the Supervised Ministry Reflection Seminars.

4.504 All faculty members are expected to be present at all Convocation Programs, Study Days, Diaconate Ordinations, and Commencement.

APPOINTMENT, EVALUATION AND PROMOTION OF PROFESSORS TO THE SCHOOL OF THEOLOGY

0.001 This document outlines the procedures for the application, appointment, evaluation and promotion of all professors to Saint Meinrad School of Theology.

0.002 Because of the sponsoring relationship which exists between Saint Meinrad Archabbey and the Saint

Meinrad School of Theology, application for faculty position in the school, recommendation to appointment, and evaluation of monastic personnel require special consideration by this faculty. Certain of the policies following will govern these cases so that scholarly excellence and healthy pluralism of personnel may be maintained within the School of Theology (Faculty Constitution, 3.000).

0.003 The Chairpersons of the departments within the school consult annually with the Academic Dean to discuss the present and future academic needs for personnel within the School of Theology.

0.004 The Academic Committee, with the guidance of the Academic Dean, will annually review the present and future needs of the School of Theology (Faculty Constitution, 2.112.)

0.005 The Academic Committee recommends to the President-Rector that a position(s) should be made available because of academic need.

0.006 The President-Rector, in consultation with the Budget Director and Academic Dean, recommends to the Personnel Committee that a search be initiated (Faculty Constitution, 3.101.).

0.007 The Personnel Committee must institute a Search Committee immediately (Faculty Constitution, 2.111).

0.008 The Committee should be aware of the School of Theology's commitment to, and affirmative action for,

a personnel which is both diverse and pluralist (Faculty Constitution, 3.000; 3.102, PPF# 243).

APPOINTMENT PROCEDURES

1.100 The Personnel Committee will contact the Monastic Personnel Committee through the President-Rector to seek within the Monastic Community of Saint Meinrad Archabbey qualified personnel available for immediate and future appointment.

1.101 Should the Personnel Committee institute a Search Committee for a position declared available through long-range planning of the Academic Committee, the Search Committee should inquire of the departmental chairpersons about possible individuals within the monastic community who might be recommended by reason of their interest, availability, and qualifications to undertake appropriate studies for that position.

1.102 After consultation with the appropriate departmental chairpersons, the Academic Committee and the Academic Dean, the Search Committee should develop a clear description of the position available which may be offered to prospective candidates and their respective superiors.

1.103 The Personnel Committee should petition the President-Rector to inquire of the appropriate superiors of the individual(s) involved to determine availability and interest of Saint Meinrad Archabbey

in supporting and funding the education necessary for said position.

1.104 With the approval of the appropriate monastic superiors, prospective candidates for future positions should be interviewed by the Search Committee as to their ability to undertake meeting the School's need, their ability to fulfill the position's scholarly requirements, and their commitment to being available for such an undertaking.

1.105 Because of the School of Theology's central purpose, particular consideration should be given to candidates who wish to incorporate pastoral activities into their scholarly programs. According to the qualities necessary for clerical faculty members, as specified by the NCCB, (3rd ed. 1982) Program of Priestly Formation: "As a rule, priest faculty members should have some years of appropriate parochial or pastoral ministry." (#241), even if this should lengthen those programs.

1.106 When an individual has been considered and approved by the Committee for said position, the Committee asks the Rector to recommend to the appropriate superiors appointment to a program of graduate studies.

1.107 During his graduate studies, the candidate will keep in regular contact with the Academic Dean concerning his academic progress.

1.108 Should the candidate, during the course of graduate studies, find himself unable to continue scholarly work for whatever reason, written notification should be forwarded to the Chairperson of the Personnel Committee so that a new Search Committee may be instituted.

1.109 Although the Committee recognizes the value of teaching as a means of securing the candidate's grasp of his own scholarly material, it prefers to see the completion of academic requirements for the position required (i.e., appropriate terminal degree).

1.200 Upon occasion, monastic personnel with qualified experience may make their availability known to the Academic Committee to fulfill needs of the School as yet undeclared. The Academic Committee will recommend to the President-Rector that the Personnel Committee discuss qualifications and appointment of such available personnel. The ordinary procedures of appointment (1.102-1.104, 1.300-1.305) will be followed.

1.300 All monastic personnel considered for available positions are required to submit to the Personnel Committee the usual credentials for appointment; namely, those specified in the Curriculum Vitae (Appendix I), and two letters of recommendation. This material is required to be kept on file for periodic reviews by Accrediting Agencies.

1.301 Appointment of monastic personnel to declared positions in the School of Theology will proceed in

accord with the Faculty Constitution (3.103) and Criteria for Faculty Evaluation adopted by the faculty.

1.302 Adjustments may be made to these evaluative criteria at the judicious discretion of the Personnel Committee according to the circumstances of the individual applying for appointment.

1.303 Approval of monastic personnel is normally assured, unless the usual credentials, their evaluative criteria and adjustments are not fulfilled. In the event that a previously declared need is no longer the case, the President-Rector will contact the Archabbot as quickly as possible to discuss the situation.

1.304 Should the candidate not be qualified, the Committee will decline to make a recommendation to the President-Rector.

1.305 The Personnel Committee, upon completion of its evaluation, will recommend or decline to recommend to the President-Rector appointment of monastic personnel to the faculty of the School of Theology.

2.001 Should no monastic personnel be available for a position required by the School of Theology, an open Search Committee will be instituted at the request of the President-Rector.

2.002 The Personnel Committee must institute a Search Committee which takes account of the ordinary avenues of publicity and affirmative action.

2.003 All candidates considered are required to submit to the Personnel Committee the usual credentials for appointment concerning availability, interest, and qualifications; namely, Curriculum Vitae, two letters of recommendation; evidence of scholarly achievement, etc. (Faculty Constitution, 3.103).

2.004 Candidates who are seriously considered for available appointments will be invited for an interview at the School of Theology with representatives of the bodies appropriate to their appointment.

2.005 The President-Rector will notify candidates as quickly as possible of consideration for appointment.

2.006 Written tender of appointment and acceptance shall be considered binding on both parties.

EVALUATION AND PROMOTION PROCEDURES

3.000 All Professors of Saint Meinrad School of Theology, including monks of Saint Meinrad Archabbey or those affiliated with that community, will undergo a program of academic review of professional competence and will submit to the same schedule for regular promotion (Faculty Constitution, 3.100-3.633; Procedures of Faculty Evaluation and Criteria for Faculty Evaluation adopted by Faculty, October 5, 1977).

3.001 Evaluation of monastic personnel for promotion or continuing appointment will proceed according to the

normal policies of the Faculty of the School of Theology and the same adjoining criteria which have obtained in their initial appointment.

3.002 All monks of Saint Meinrad Archabbey now teaching on the faculty who held the rank of full professor at the time of the promulgation of the original faculty constitution will be considered exempt from this procedure.

April, 1981

APPENDIX F

American Association of University professors
1012 Fourteenth Street, NW, Suite #500
Washington, DC 20005
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AAUP Home Page
Other Press Releases

Delegates to 1997 Annual Meeting Add Two Institutions to AAUP List of Censured Administrations and Removes Two Others; Number of List Remains 52

Washington, D.C.–The American Association of University Professors (AAUP) added two institutions to its list of censured administrations. Delegates to the eighty-third Annual Meeting on Saturday, June 14th, voted to censure the administrations of the Minneapolis College of Art and Design (MCAD) and Saint Meinrad School of Theology (Indiana). At the same meeting, delegates voted to remove censure in the cases of the University of the Ozarks (Arkansas) and Marquette University (Wisconsin). Both institutions had been on the list for more than two decades, an unusual circumstance. The number of institutions on the list remains at 52.

Censure by AAUP informs the academic community that the administration of the institution has not adhered to the generally recognized principles of academic freedom and

tenure jointly formulated by AAUP and the Association of American Colleges and Universities and endorsed by more than 150 professional and educational organizations.

Institutions Removed from the List of Censured Administrations

The University of the Ozarks (placed on the list in 1964)
Marquette University (placed on the list in 1976)

Institutions Added to the List of Censured Administrations

Minneapolis College of Art and Design
Saint Meinrad School of Theology (Indiana)

The Institutions Removed from the Censured List:

The University of the Ozarks

The institution then known as the College of the Ozarks was added to the censure list by action of the Fiftieth Annual Meeting in 1964. The censure was voted specifically on the board of trustees. The action stemmed from the board's approval, back in 1958, of the dismissal of a professor for cause. For reasons largely beyond the Association's control, including litigation and the transfer of jurisdiction over the college to a different church body, an investigating committee's report could be published only in 1963. The report found that the board's procedures in dealing with the dismissal were seriously deficient with respect to academic due process. By the time of the imposition of

censure, acceptable dismissal procedures had been adopted. The board, however, insisting that the conduct of the professor resulting in his dismissal had been morally turpitudinous, stated that it would do nothing whatsoever to provide him with redress.

Over the ensuing years, the board adopted several Association-recommended policy documents in addition to dismissal procedures. Successive presidents of the college approached the board on the matter of offering redress and subsequently informed the Association's staff that the board remained adamantly opposed.

The dismissed professor died in 1982. One significant AAUP-supported policy remained unadopted: furnishing reasons upon request for a decision against reappointment. Invited to adopt the policy, the board balked. The AAUP staff was told informally that senior board members, believing all along that the censure was unjustified, had assumed that it would be lifted with the professor's death and were averse to doing yet something else now called for by the Association as the price of achieving censure removal. The staff asked that the board be urged to adopt the policy not because the Association wanted it done but because it is the right thing to do. For many years, however, the board remained unmoved.

A year and a half ago, a new academic vice president, who herself had served on the faculty of what by now had become the University of the Ozarks, stated that the censure had gone on much too long and she was anxious to achieve a resolution. Last October, a new member of the board of trustees, himself a professor at another university in Arkansas, consulted with the AAUP staff about the

outstanding issue and volunteered to help resolve it. Late this April, at its spring meeting, the board of trustees voted to revise the policy so that henceforth reasons for nonreappointment will be provided.

Marquette University

The administration of Marquette University was censured by vote of the 1976 Annual Meeting following the report of an investigating committee on the case of a tenured professor who was separated from the faculty upon his resignation from membership in Marquette Jesuit Associates, the sponsoring religious order, and his release from religious vows. The administration declined to demonstrate cause for the separation before a faculty hearing body, taking the position that the professor, under the provisions of an agreement between the university and Marquette Jesuit Associates, had in effect removed himself from the faculty by his decision to leave the order. Noting that there was a dispute between the professor and the administration over the interpretation of the agreement, and that the agreement did not specifically proscribe the professor's continuance, the investigating committee concluded that the administration could not properly terminate the professor's services without first affording him academic due process as called for in the 1940 *Statement of Principles on Academic Freedom and Tenure*.

The professor whose case led to the censure relocated successfully and has not sought redress. Remaining of concern have been the university's tenure policies for Jesuit members of the faculty when measured against applicable Association-supported standards. In 1982, the agreement

between the university and the religious order was revised to state specifically that when a Jesuit faculty member leaves the order he thereby severs his relationship with the university. (Currently there are seventeen Jesuits on a faculty numbering nearly 500). In a letter to the Association dated February 17, 1997, the president of the university, following discussions with officers of the local AAUP chapter and of Marquette Jesuit Associates, offered precise assurances that: (1) the conditions of the agreement between the order and the university will be repeated in every annual contract signed by a Jesuit faculty member; and (2) a Jesuit faculty member subject to separation from the university for having left the order will have the opportunity for a hearing before a faculty committee if he contends that he is not aware of the consequences of his leaving the order for his university appointment. These assurances, while leaving undisturbed the conditional kind of tenure provided in the agreement between the order and the university, serve to mitigate the kind of concerns in any future case that characterized the case that occurred more than two decades ago.

The Institutions Added to the Censure List:

Saint Meinrad School of Theology (Indiana)

Saint Meinrad, which dismissed a tenured faculty member in the Department of Systematic Theology on grounds of public dissent, for having joined with more than 1500 others in signing an open letter to Pope John Paul II asking that continued discussion be permitted concerning the question of ordaining women to the priesthood, was one of

two institutions added to the AAUP list of Censured Administrations at its June meeting.

Saint Meinrad has formally adopted the 1940 *Statement of Principles on Academic Freedom and Tenure*, stating explicitly that its due process provisions would be applicable in all cases of dismissal except those involving excommunication. Nonetheless, the administration refused to grant a hearing for the professor before an appropriate faculty committee, asserting that the case was ecclesiastical rather than academic.

The Association's *ad hoc* investigating committee concluded that, in failing to afford the faculty member an appropriate hearing, the administration violated the due process provisions of both the 1940 Statement and the seminary's own Faculty Constitution. The committee further found that, by dismissing her without demonstrating that her signing of the open letter (without indication of her religious or institutional affiliation) rendered her unfit to retain her faculty position, the administration violated her academic freedom–specifically her rights as a citizen as provided in the 1940 Statement. The delegates concurred with the conclusions reached in the committee's published report and voted to place the Saint Meinrad School of Theology on the list of censured administrations.

Minneapolis College of Art and Design

Delegates voted to place the Minneapolis College of Art and Design (MCAD) on the list after the administration terminated the services of five senior members of the faculty. MCAD, which has no tenure system, dismissed the faculty

members at the end of the second year of three-year term contracts and paid them a year of severance salary.

The administration, after having denied the chronically underpaid faculty any salary increases over successive years, induced most of the long-term faculty, including the five, to sign new three-year contacts, under which they relinquished the limited procedural protections they previously had in exchange for substantial increases in salary. These new contracts permitted termination without cause one year prior to the expiration of its term, with payment of the severance salary. Renewal of contracts is at the discretion of the administration, and new contracts can be for any length of time.

The report found that the MCAD policies governing faculty appointments are fundamentally at odds with the 1940 *Statement of Principles on Academic Freedom and Tenure*. It found that the five released professors, whose length of full-time service on the faculty ranged from eleven to twenty-nine years, had gained entitlement under the provisions of the 1940 Statement of principles to the procedural safeguards that accrue with academic tenure.

With no reasons having been given by the administration for its actions, and with no hearing having been afforded to any of the affected individuals, the report found that the actions were tantamount to summary dismissals, violative of the 1940 Statement of Principles. Moreover, it found the administration's earlier offer of a good-sized salary increase in exchange for surrendering existing rights to be unconscionable. Delegates concurred

with these conclusions and voted to place the institution on the censure list.

Copies of statements for each of the institutions voted upon at the 1997 AAUP Annual Meeting are available upon request.

The American Association of University Professors is the national organization serving the academic profession and college and university faculty members. AAUP is dedicated to the defense of academic freedom and tenure and serves as the voice for sound academic standards and due process. The Association has more than 44,000 members at colleges and universities throughout the country. For more information, contact Jordan Kurland, 202-737-5900.